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SUPREME COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1963

No. 12

ROBERT MACK BELL, ET AL., PETITIONERS,

vs.

MARYLAND.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF MARYLAND

PETITION FOR CERTIORARI FILED JUNE 8, 1963
CERTIORARI GRANTED JUNE 10, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 12

ROBERT MACK BELL, ET AL., PETITIONERS,

vs.

MARYLAND.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

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IN THE COURT OF APPEALS OF MARYLAND

September Term, 1961

No. 91

ROBERT MACK BELL, LOVELLEN P. BROWN, ARIMENTHA D. BULLOCK, ROSETTA GAINEY, ANNETTE GREEN, ROBERT M. JOHNSON, RICHARD McKOY, ALICETEEN E. MANGUM, JOHN R. QUARLES, SR., MURIEL B. QUARLES, LAWRENCE M. PARKER, and BARBARA F. WHITTAKER, Appellants,

v.

STATE OF MARYLAND, Appellee.

Appeals from the Criminal Court of Baltimore
(Joseph R. Byrnes, Judge)

Appendix of Appellants' Brief—Filed September 25, 1961

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[fol. 3]

IN THE CRIMINAL COURT OF BALTIMORE, MARYLAND

PART III

DOCKET ENTRIES AND JUDGMENT

Docket 1960.
May Term.
Number 2523.

Charge: Trespassing, etc.

Prosecuting Witness—Gilbert C. Hooper, Sr.

Appearance of R. B. Watts, T. R. Dearing and J. J. Mitchell, Attorneys, as to each, filed.

June 20, 1960—Recognizance as to each filed.

June 24, 1960—Presentment as to each filed — e.d. — Capias Issued—Cepi, Bail as to each.

June 27, 1960—Recognizance taken as to each: Released on own Recognizance—$100.00.

July 12, 1960—Indictment filed.

November 10, 1960—Copy of Indictment Served—Receipt filed.

November 10, 1960—Arraigned and pleads as to each, Not Guilty.

November 10, 1960—Submits under plea as to each, Not Guilty and Issue before Byrnes, Judge.

November 10, 1960—Not concluded and resumed on 24 March, 1961.

March 24, 1961—Verdict: As to each, Guilty 1st Count, Not Guilty 2nd Count.

March 24, 1961—Judgment: As to each, Fined $10.00 and Costs. Fine suspended and to pay Court Costs.

March 24, 1961—As to Bell, et al., Costs $89.00 paid Sheriff.

[fol. 4] March 24, 1961—Memorandum Opinion filed. Byrnes, Judge.

April 12, 1961—As to each: An Appeal to the Court of Appeals of Maryland, filed.

April 28, 1961—Order of Court that the time for filing the Transcript of Testimony be extended to and including 26 May, 1961, filed. Byrnes, Judge.

May 18, 1961—Transcript of Testimony filed. Transcript No. 1800.

May 22, 1961—Appearance of Robert B. Watts, Esq., stricken out.

IN THE CRIMINAL COURT OF BALTIMORE, MARYLAND

PART III

INDICTMENT—Filed July 12, 1960

State of Maryland, City of Baltimore, to wit:

The Jurors of the State of Maryland, for the body of the City of Baltimore do on their oath present that Robert Mack Bell, Lovellen P. Brown, Arimenth A. D. Bullock, Rosetta Gainey, Annette Green, Robert M. Johnson, Richard McKoy, Aliceteen E. Mangum, John R. Quarles, the elder, Muriel B. Quarles, Lawrence M. Parker, and Barbara F. Whittaker, that on the seventeenth day of June, in the year of our Lord nineteen hundred and sixty, at the City aforesaid, unlawfully did enter upon and cross over the land, premises and private property of a certain corporation in this State, to wit, Hooper Food Co., Inc., a corporation, after having been duly notified by Albert Warfel, who was then and there the servant and agent for Hooper Food Co., Inc., a corporation, not to do so; contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

* * * * * * *

IN THE CRIMINAL COURT OF BALTIMORE, MARYLAND

PART III

DEFENDANTS' MOTION FOR DIRECTED VERDICT

Now come Defendants, by their Attorneys, Brown, Allen and Watts, Dearing and Toadvine, and Juanita Jackson Mitchell, and move the Court for a directed verdict in their favor and assign therefor the following reasons:

[fol. 5] 1. The restaurants which are the complaining witnesses in above styled cases are privately-owned places of public accommodation;

2. Defendants were business invitees, peacefully upon the premises of these public accommodations, and are not guilty of trespass;

3. Application of Article 27, Section 577 of the Annotated Code of Maryland 1957 Edition to these Defendants abridges the rights of the Defendants to freedom of speech and of association in violation of the State of Maryland and the Fourteenth Amendment of the Constitution of the United States;

4. Application of Article 27, Section 577 of the Annotated Code of Maryland 1957 Edition to these Defendants abridges the rights of the Defendants to freedom of assembly in contravention of the Fourteenth Amendment to the Constitution of the United States;

5. Defendants were upon the properties in question under a claim of right and their arrest and conviction would be in violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States;

6. Conviction of the Defendants under the facts and circumstances of this case would deny to them due process contrary to the Fourteenth Amendment of the Constitution of the United States, in that the trespass statute as here applied authorizes their ejection, arrest, prosecution and conviction for being in a public place, solely on account of their race and color in violation of the liberty guaranteed by the Fourteenth Amendment of the Constitution of the United States;

7. Application of the statute of these Defendants violates their rights to equal protection of the law clause of the Fourteenth Amendment of the Constitution of the United States by singling them out for ejectment and arrest solely because of their race and color;

[fol. 6] 8. The statute as applied to these Defendants denied to these Defendants due process of law because it enforced a private rule or regulation of the restaurant owners requiring racial segregation and discrimination in the restaurants in violation of the Fourteenth Amendment of the Constitution of the United States;

9. The Trespass Statute, as applied to these Defendants, denied to them due process and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States, in that it authorizes or requires the convictions of Defendants of a crime for failing or refusing to obey an order of a private person based solely upon the race or color of the Defendants;

10. Defendants were denied equal protection of the laws guaranteed to them by the Fourteenth Amendment to the Constitution of the United States when, after having been invited into the facilities in question, as members of the general public, they were ordered out and discriminated against by the restaurant owners on account of their race and color, and when the State of Maryland enforced such discrimination by the arrest and prosecution of these Defendants;

11. Application of the Trespass Statute under the facts and circumstances of this case violates the common law and statutory rights of these Defendants not to be excluded from the common market.

Wherefore, your Defendants pray that the Court direct a verdict in their favor.

Brown, Allen and Watts
Dearing and Toadvine
Juanita Jackson Mitchell

IN THE CRIMINAL COURT OF BALTIMORE, MARYLAND

PART III

MEMORANDUM OPINION—Filed March 24, 1961

BYRNES, *J.*

On July 12, 1960 the above named defendants, students attending local schools, were indicted by the Baltimore [fol. 7] City Grand Jury for trespassing on the premises of Hooper's Restaurant at the southwest corner of Fayette and Charles Streets in Baltimore City. The first count of the indictment charges that the defendants

> " . . . on the seventeenth day of June, in the year of our Lord nineteen hundred and sixty, at the City aforesaid, unlawfully did enter upon and cross over the land, premises and private property of a certain corporation in this State, to wit, Hooper Food Co., Inc., a corporation, after having been duly notified by Albert Warfel, who was then and there the servant and agent for Hooper [sic] Food Co., Inc., a corporation, not to do so; contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State."

The second count charges that the defendants

> " . . . unlawfully did enter and trespass on certain property of Hooper Food Co., Inc., a corporation which said property was then and there posted against trespassers [sic] in a conspicuous manner; contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State."

Testimony at the trial disclosed that on June 17, 1960, the defendants entered the restaurant while it was open for business and requested the hostess, Ella Mae Dunlap, to assign them seats at tables for the purpose of being served. She informed them that it was not the policy of the restaurant to serve Negroes, and that she was sorry but she could not seat or serve any of the defendants. She

explained to them that she was following the instructions of the owner of the restaurant.

Despite this refusal, defendants persisted in their demands and, brushing by the hostess, took seats at various tables on the main floor and at the counter in the basement. Not being served, which they apparently anticipated, some of the defendants began to read their school books.

[fol. 8] The trespass statute, Article 27, section 577 of the Maryland Code, 1957 Ed. was read to the defendants and they were told by the manager, Albert R. Warfel, that they were trespassers, and they were then requested to leave. Upon their refusal to do so, police were summoned. Warfel was advised by the police that in order to have defendants ejected by the Baltimore City Police Department it would be necessary for him to obtain warrants for their arrest for trespassing. Warrants were obtained and the arrests followed. Defendants waived a hearing before the Magistrate at the Central Police Station and the case was referred to the Grand Jury.

Defendants contend that their ejection from the restaurant, and subsequent arrest were violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States. The position of the State and the Restaurant Association of Maryland, appearing as Amicus Curiae, is that these clauses of the Fourteenth Amendment do not prohibit discriminatory action by private individuals, such as the proprietor of the restaurant here, nor do they inhibit state action in the form of arrest and conviction for trespass of persons who defy the proprietor's request to leave his property regardless of his reason for doing so. No cases supporting defendants' contention were cited to or found by this Court; on the other hand the State's position is firmly rooted in authority.

At the trial of this case, defendants' counsel repeated arguments made before the Supreme Court of the United States in the highly-publicized case of *Boynton* v. *Virginia*, 364 U.S. 454 (1960) and requested this Court to withhold its decision pending the outcome of that case. Since then the *Boynton* case has been decided, but nothing in the

Court's opinion gives solace to defendants. While it is true that Supreme Court reversed the Virginia Court's conviction of Boynton, an alleged trespasser in a privately owned restaurant, the Court avoided the Constitutional questions there presented (the same ones advanced here) and held that the restaurant at an interstate bus terminal, [fol. 9] although privately owned, was an "integral part of the bus carriers transportation service for interstate passengers" and any racial discrimination in the restaurant violated provisions of the Interstate Commerce Act barring discriminations of all kinds.

It is significant, this Court believes, that in *Boynton, supra*, the Court was careful to point out that "We are not holding that every time a bus stops at a wholly independent roadside restaurant the Interstate Commerce Act requires that restaurant service be supplied in harmony with the provisions of that Act."

Two recent decisions clearly in point are determinative of the principle that in the absence of appropriate legislation forbidding racial discrimination the operators of privately owned restaurants, even though generally open to the public, may discriminate against persons of another color or race, however unfair or unjust such policy may be deemed to be.

In a per curiam opinion the United States Court of Appeals for the Fourth Circuit, *Slack* v. *White Tower*, 284 F. 2d 746 (1960), affirmed Judge Roszel Thomsen's decision holding, after an excellent summation of the applicable law, that a restaurant owner in refusing service to a Negro, violated no law nor did such refusal deprive the Petitioner of any constitutional guarantees, *Slack* v. *White Tower*, 181 F. Supp. 124 (1960).

In the most recent case dealing with efforts of Negroes to force the owners of business premises to open their establishments to all comers through so-called "sit-in" tactics, our Court of Appeals in *Drews* v. *State*, —— Md. ——, 167 A. 2d 341 (1961) affirmed Judge W. Albert Menchine's conviction of four persons charged with disorderly conduct for refusing to leave Gwynn Oak Amusement Park in Baltimore County after being ordered to do so. Speaking for

the Court, Judge Hammond pointed out that the duty imposed by the early common law to serve the public without discrimination was later confirmed to exceptional callings where an urgent public need required its continuance, [fol. 10] such as innkeepers and common carriers. Continuing Judge Hammond stated that

> "• • • Operators of most enterprises including places of amusement, did not and do not have any such common law obligation, and in the absence of a statute forbidding discrimination, can pick and choose their patrons for any reason they decide upon, including the color of their skin."

For the reasons stated this Court must find each defendant guilty on the first count of the indictment, and not guilty on the second count.

Each defendant is fined $10.00 and cost, the fine is suspended, the costs must be paid.

IN THE CRIMINAL COURT OF BALTIMORE, MARYLAND

PART III

TRANSCRIPT OF SENTENCING—March 24, 1961

(The Court) I appreciate the assistance counsel have given me. This was an extremely well-tried and interesting case.

I have written a short opinion based upon the law as I understand it to be, so I see nothing to be served by reading my opinion. I will have copies for all parties.

The verdict is guilty on the first count as to each defendant; not guilty on the second count as to each defendant.

(Statement by Mr. Watts in behalf of the defendants.)

(The Court) I appreciate that comment, Mr. Watts. I agree with you these people are not law-breaking people; that their action was one of principle rather than any intentional attempt to violate the law. Under the law as it stands they did violate this particular statutory section of our Code.

[fol. 11] As to the disposition: A fine of Ten Dollars as to each defendant, and because of what you just said and the fact they did not intend to deliberately violate the law but were seeking to establish a principle, the court will suspend the fine, but the court directs that the costs be paid by the defendants.

[fol. 12]

IN THE COURT OF APPEALS OF THE STATE OF MARYLAND

No. 91

September Term, 1961

ROBERT MACK BELL, et al.,

v.

STATE OF MARYLAND.

Brune, C.J., Henderson, Prescott, Horney, Marbury, JJ.

OPINION BY HENDERSON, J.—Filed January 9, 1962

[fol. 13] These appeals are from $10.00 fines imposed, but suspended, after convictions in the Criminal Court of Baltimore for trespassing on the privately owned premises of Hooper's Restaurant. The appellants entered the premises in protest against the restaurant owner's policy of not serving negroes and refused to leave when asked to do so. In fact, they occupied seats at various tables and refused to relinquish them unless and until they were served. The manager thereupon summoned the police and swore out warrants for the arrest of the "sit-in" demonstrators. They elected not to be tried by the magistrate and were subsequently indicted and tried.

The appellants contend that the State may not use its judicial process to enforce the racially discriminatory practices of a private owner, once that owner has opened his property to the general public, and that the Maryland Criminal Trespass Statute, although constitutional on its

face, has been unconstitutionally applied. Apparently the appellants would concede that the owner could have physically and forcibly ejected them, but deny that he could constitutionally invoke the orderly process of the law to accomplish that end.

We find it unnecessary to dwell on these contentions at length, because the same arguments were fully considered and rejected by this Court in two recent cases, *Drews* v. [fol. 14] *State*, 224 Md. 186, and *Griffin & Greene* v. *State*, 225 Md. 422. We expressly held in the *Griffin* case, contrary to the arguments now advanced, that demonstrators are not within the exception in the Maryland Trespass Statute, Code (1957), Art. 27, sec. 577, relating to "a *bona fide* claim of right or ownership", and that the statutory references to "entry upon or crossing over", cover the case of remaining upon land after notice to leave.

We have carefully considered the latest Supreme Court case on the subject, *Garner* v. *Louisiana*, —— U.S. ——, 30 L.W. 4070, decided December 11, 1961. There, convictions of "sit-in" demonstrators for disturbing the peace were reversed on the ground that the convictions were devoid of evidentiary support. Chief Justice Warren, for a majority of the court, found it unnecessary to consider contentions based on broader constitutional grounds. In the absence of further light upon the subject, we adhere to the views expressed in the *Griffin* case.

The appellants further contend, however, that the Maryland Statute, as applied, denies to them the freedom of speech guaranteed under the First and Fourteenth Amendments to the United States Constitution. They argue that their action in remaining on the premises amounted, in effect, to a verbal or symbolic protest against the discriminatory practice of the proprietor. They rely heavily upon *Marsh* v. *Alabama*, 326 U.S. 501. In that case a distributor of religious literature on the sidewalk of a "company town" [fol. 15] was prosecuted and convicted of trespass when he declined to leave or desist. The conviction was reversed on First Amendment grounds, despite the finding of the State court that the sidewalk had never been dedicated to public use. Cf. *Tucker* v. *Texas*, 326 U.S. 517, involving a village owned by the United States. But it would appear

that the rule of the *Marsh* case had not been extended to [fol. 16] the interiors of privately owned buildings, even those of a quasi-public character. See *Watchtower Bible & T. Soc.* v. *Metropolitan Life Ins. Co.*, 79 N.E. 2d 433 (N. Y.); cert. den. 335 U. S. 886; rehearing den. 335 U.S. 912; *Hall* v. *Commonwealth*, 49 S.E. 2d 369 (Va.); appeal dism. 335 U. S. 875; and *Breard* v. *Alexandria*, 341 U. S. 622. On principle, we think the right to speak freely and to make public protest does not import a right to invade or remain upon the property of private citizens, so long as private citizens retain the right to choose their guests or customers. We construe the *Marsh* case, *supra*, as going no further than to say that the public has the same rights of discussion on the sidewalks of company towns as it has on the sidewalks of municipalities. That is a far cry from the alleged right to engage in a "sit-in" demonstration.

Judgments Affirmed, With Costs.

[fol. 17].

IN THE COURT OF APPEALS OF THE STATE OF MARYLAND

No. 91—September Term, 1961

Appeal from the Criminal Court of Baltimore.

Filed: May 26, 1961.

January 9, 1961: Judgments affirmed, with costs. Op. Henderson, J.

ROBERT MACK BELL, et al.

v.

STATE OF MARYLAND

MANDATE

Statement of Costs:

In Circuit Court:

Record

Stenographer's Costs $79.00

In Court of Appeals:

Filing Record on Appeal	$ 20.00
Printing Brief for Appellant	164.80
Reply Brief	
Portion of Record Extract—Appellant	
Appearance Fee—Appellant	10.00
Printing Brief for Appellee	91.50
Portion of Record Extract—Appellee	
Appearance Fee—Appellee	10.00

State of Maryland, Set:

I do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this eighth day of February A. D. 1962.

J. Lloyd Young, Clerk of the Court of Appeals of Maryland.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE

[fol. 18]

IN THE COURT OF APPEALS OF THE STATE OF MARYLAND

CLERK'S CERTIFICATE

State of Maryland: Set:—

I, J. Lloyd Young, Clerk of the Court of Appeals of Maryland, the highest Court of said State with final jurisdiction on appeals from the trial courts therein, do hereby certify that the foregoing are full and true copies of the documents, originals of which are on file in the office of said Clerk, in the appeal of *Robert Mack Bell et al.* v. *State of Maryland*, No. 91—September Term, 1962:

1. Appellants' Appendix, filed in this office on September 25, 1961.
2. Opinion of the Court of Appeals, filed on January 9, 1962.
3. Docket Entries therein of the Court of Appeals, dated February 8, 1962.

In Testimony Whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals of Maryland this fifth day of June, 1962.

(Seal)

J. Lloyd Young, Clerk, Court of Appeals of Maryland.

[fol. 19]

IN THE CRIMINAL COURT OF BALTIMORE, MARYLAND

PART III

INDICTMENT—Filed July 12, 1960

State of Maryland,
City of Baltimore, to wit:

The Jurors of the State of Maryland, for the body of the City of Baltimore do on their oath present that Robert Mack Bell, Lovellen P. Brown, Arimentha D. Bullock, Rosetta Gainey, Annette Green, Robert M. Johnson, Richard McKoy, Aliceteen E. Mangum, John R. Quarles, the elder, Muriel B. Quarles, Lawrence M. Parker and Barbara F. Whittaker, that on the seventeenth day of June, in the year of our Lord nineteen hundred and sixty, at the City aforesaid, unlawfully did enter upon and cross over the land, premises and private property of a certain corporation in this State, to wit, Hooper Food Co., Inc., a corporation, after having been duly notified by Albert Warfel, who was then and there the servant and agent for Hooper Food Co., Inc., a corporation, not to do so; contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

Second Count.

And the Jurors aforesaid, upon their oath aforesaid, do further present that the said Robert Mack Bell, Lovellen P. Brown, Armentha D. Bullock, Rosette Gainey, Annette Green, Robert M. Johnson, Richard McKoy, Aliceteen E. Mangum, John R. Quarles, the elder, Muriel B. Quarles, Lawrence M. Parker, and Barbara F. Whittaker, on the said day, in the said year, at the City aforesaid, unlawfully did enter and trespass on certain property of Hooper Food Co., Inc., a corporation, which said property was then and there posted against trespassers in a conspicuous manner; contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

Saul A. Harris, The State's Attorney for the City of Baltimore.

[fol. 20]
S

2523Y

STATE OF MARYLAND

vs.

ROBERT MACK BELL (c) 17 B, LOVELLEN P. BROWN (c) B 17, ARIMENTHA D. BULLOCK (c) B 17, ROSETTA GAINEY B (c) 19, ANNETTE GREEN B (c) 18, ROBERT M. JOHNSON, B (c) 18, RICHARD MCKOY B (c) 17, ALICETEEN E. MANGUM B (c) 22, JOHN R. QUARLES, SR. B (c) 20, MURIEL B. QUARLES B (c) 21, LAWRENCE M. PARKER B (c) 20 and BARBARA F. WHITTAKER B (c) 18,

Indictment

(TRUE BILL)

(R. B. Watts
As to each (T. R. Dearing
(J. J. Mitchell

16

Nov 10 1960—Not Concluded

(Signature illegible), Foreman.

Filed Jul 12 1960

Byrnes, J.

Witnesses:

Gilbert C. Hooper, Sr.
Lt. Redding CD
Sgt. Sauer "
Sgt. Grempler "
Albert Warfel

Trespassing, etc.

Drawn trespassing
O. K. JAM
O. K.

Copy of Indictment Served
Receipt Filed Nov 10 1960

Bell

A Nov 10 1960 P NG T C

V G¹ NG² S Fined 10.00 & Fine Suspended To Pay Costs

Mar 24 1961

Brown

A Nov 10 1960 P NG T C

V G¹ NG² S Fined 10.00 & Fine Suspended To Pay Costs

Mar 24 1961

Bullock

A Nov 10 1960 — P NG — T C

V G[1] NG[2] — S Fined 10.00 & Fine Suspended To Pay Costs

Mar 24 1961

Gainey

A Nov 10 1960 — P NG — T C

V G[1] NG[2] — S Fined 10.00 & Fine Suspended To Pay Costs

Mar 24 1961

Green

A Nov 10 1960 — P NG — T C

V G[1] NG[2] — S Fined 10.00 & Fine Suspended To Pay Costs

Mar 24 1961

Johnson

A Nov 10 1960 — P NG — T C

V G[1] NG[2] — S Fined 10.00 & Fine Suspended To Pay Costs

Mar 24 1961

McKoy

A Nov 10 1960 P NG T C

Fined 10.00 &
V G[1] NG[2] S Fine Suspended
To Pay Costs

Mar 24 1961

Mangum

A Nov 10 1960 P NG T C

Fined 10.00 &
V G[1] NG[2] S Fine Suspended
To Pay Costs

Mar 24 1961

John Quarles

A Nov 10 1960 P NG T C

Fined 10.00 &
V G[1] NG[2] S Fine Suspended
To Pay Costs

Mar 24 1961

Muriel Quarles

A Nov 10 1960 P NG T C

Fined 10.00 &
V G[1] NG[2] S Fine Suspended
To Pay Costs

Mar 24 1961

Parker

A Nov 10 1960 P NG T C

V G[1] NG[2] S Fined 10.00 & Fine Suspended To Pay Costs

Mar. 24 1961

Whittaker

A Nov 10 1960 P NG T C

V G[1] NG[2] S Fined 10.00 & Fine Suspended To Pay Costs

Mar 24 1961

POSTED TO COSTS RECORD

Date 3/28/61 By E. R. WINSON

Page Number 158

FINES & COSTS

Fine	—
States Attorney	5.00
Clerk	8.75
Sheriff	75.25
Attorney	—
Total	89.00

[fol. 21] [File endorsement omitted]

IN THE CRIMINAL COURT OF BALTIMORE, MARYLAND

PART III

STATE OF MARYLAND

vs.

ROBERT M. BELL, LOVELLEN P. BROWN, ARIMENTHA D. BULLOCK, ROSETTA GAINEY, ANNETTE GREEN, ROBERT M. JOHNSON, RICHARD McKAY, ALICETEEN E. MANGUM, JOHN R. QUARLES, JR., MURIEL B. QUARLES, LAWRENCE M. PARKER, BARBARA F. WHITTAKER

Indictment #2523

Transcript of Proceedings—November 10, 1960

Baltimore, Maryland
November 10, 1960

Before Honorable Joseph R. Byrnes, J.

APPEARANCES:

James W. Murphy, Esq., on behalf of the State.

Robert B. Watts, Esq.
Tucker R. Dearing, Esq.
Juanita J. Mitchell,
On behalf of the Defendants.

[fol. 22] The Clerk: Indictment #2523. Robert M. Bell, Lovellen P. Brown, Arimentha D. Bullock, Rosetta Gainey, Annette Green, Robert M. Johnson, Richard McKay, Aliceteen E. Mangum, John R. Quarles, Jr., Muriel B. Quarles, Lawrence M. Parker and Barbara F. Whittaker. As I understand all three counsel, Mr. Watts, Mr. Dearing and Miss Mitchell are representing all defendants, is that correct?

Mr. Watts: That's right. All are here with one exception, Aliceteen Mangum.

The Clerk: All are charged with trespassing in Indictment 2523. Now as to all defendants, have copies been received?

Mr. Watts: Yes, we have received copies.

The Clerk: Robert Bell, what is your age?

Mr. Bell: 17.

The Clerk: Your address?

Mr. Bell: 2026 E. Hoffman St.

The Clerk: Lovellen Brown, your age?

Miss Brown: 17.

The Clerk: Your address?

Miss Brown: 2019 N. Wolfe St.

[fol. 23] The Clerk: Bullock, what is your age?

Miss Bullock: 17.

The Clerk: Your address?

Miss Bullock: 1211 N. Caroline.

The Clerk: Miss Gainey?

Miss Gainey: 19. 1518 N. Broadway.

The Clerk: Annette Green?

Miss Green: 18. 2019 N. Wolfe St.

The Clerk: Robert M. Johnson?

Mr. Johnson: 18. 1711 N. Castle.

The Clerk: Richard McKoy?

Mr. McKoy: 17. 2519 N. Colvin.

The Clerk: John R. Quarles?

Mr. Quarles: 28. 2409 West Lafayette.

The Clerk: Muriel Quarles?

Miss Quarles: 21. 1530 N. Caroline St.

The Clerk: Lawrence Parker?

Mr. Parker: 20. 2608 Burrell Ave.

The Clerk: And Barbara Whittaker?

Miss Whittaker: 18. 1110 Wilmot Court.

The Clerk: Aliceteen Mangum here now?

[fol. 24] Miss Mangum: Yes, sir.

The Clerk: Your age?

Miss Mangum: 22.

The Clerk: Your address?

Miss Mangum: 1404 Argyle Avenue.

The Clerk: All right. Now, the pleas as to each, Mr. Watts?

Mr. Watts: The pleas are not guilty as to each defendant.

The Clerk: Court or jury trial?

Mr. Watts: Court trial.

Mr. Murphy: I'd like to call Miss Dunlap, please.

ELLA MAE DUNLAP, produced on behalf of the State, having first been duly sworn according to law, was examined and testified as follows:

By the Bailiff:

Q. Your name and address?

A. Ella Mae Dunlap. 902 Exeter Hall.

[fol. 25] The Court: How do you spell your name?

The Witness: D U N L A P.

Direct examination.

By Mr. Murphy:

Q. Miss Dunlap, where are you employed?

A. Hooper's Restaurant, Charles and Fayette.

Q. Were you so employed on June 17th of this year?

A. Yes, I was.

Q. In what capacity are you employed at Hooper's Restaurant?

A. Hostess.

Q. In connection with your employment, what are your duties as hostess, what do you do?

A. Well, I'm at the front. As the guests come in to the lobby I greet the guests. All guests are greeted by me or another hostess who might be at the front at that particular day.

Q. Well, what do you do when you greet the guests?

A. I ask how many is in their party.

Q. I see. Do you seat them?

A. Yes, I do seat them.

[fol. 26] Q. Is anyone seated without you or the other hostess seating them?

A. No, sir.

Q. No one is allowed to seat themselves in other words, is that correct?

A. As a rule, no.

Q. All right. Now on this particular day of June 17th, this was a Friday was it not?

A. Right.

Q. Did something happen at the restaurant there, something unusual?

A. Yes, sir.

Q. About what time was it?

A. Roughly, say about 4:15 or 4:20.

Q. P. M.?

A. P. M.

Q. Now you describe to his Honor, please, just exactly what happened at that time?

A. At that particular day, 4:15 or 4:20, a group of people came in, 15 or 18 at a time. I said "May I help you?" A person said "Yes, I'd like to be seated". I said, "I'm sorry, [fol. 27] but we haven't integrated as yet".

Q. These people were negroes, is that correct?

A. That's right.

Q. And you refused to seat them at that time?

A. I said "We haven't integrated as yet".

Q. Where did this conversation take place? Where were you at that time when the conversation took place?

A. Right at the entrance of the top step in the restaurant.

Q. Where were these people, these people that had come in the group?

A. The group was in the lobby.

Q. All right. To get to the lobby, to where the dining area is, are there any steps?

A. Yes, sir. It's an elevation of about four steps.

Q. Is there a handrail there or two handrails?

A. Yes, sir. There are two handrails, one on each side.

Q. What is the distance between the handrails, approximately?

A. Roughly between four and five feet.

[fol. 28] Q. This is up the steps between the handrails

where the people have to come from the lobby to the dining area, is that right?

A. That's right.

Q. At that time you told them you were not going to seat them, is that correct?

A. I said "We haven't integrated as yet".

Q. You were at the top of the steps?

A. That's right.

Q. They were at the bottom, is that correct?

A. That's correct.

Q. What happened then?

A. They said "Well, you mean you're not going to seat us?" I said, "Well, that's right". They said "Well, aren't you ashamed of yourselves?" I said "Well, no, I'm not. It just so happens I work here. That's Mr. Hooper's orders. It's the preference of the customers". They said, "Well, you mean you're not going to seat us?" I said "Well, that's right, I work here and that's my orders at this particular time".

Q. What happened then?

[fol. 29] A. In the meantime the manager was on his way to the front of the dining room or where I was standing.

Q. What is his name?

A. Mr. Al Worfel.

Q. Go ahead.

A. While I was talking to these people, Mr. Worfel came. He started to talk to them as well. In the meantime while he was talking, we were blocking the front of approximately four feet, four to five feet.

Q. Between the handrails?

A. We were standing there talking to the group. At that particular time the group broke. They broke through the line or through Mr. Worfel and myself a distance of four to five feet and also went to the downstairs as well. We have a Grill which is downstairs.

Q. How did they get past you and Mr. Worfel?

A. Well, we were standing sort of sideways at the time and we were glancing back and answering questions and at the second we just turned, they broke through the line and seated themselves.

Q. Were you pushed?
A. They pushed me.

[fol. 30] Mr. Watts: That's leading. I object to that question.

The Court: Yes. I sustain it.

By Mr. Murphy:

Q. Well you tell us what happened, how did they get past you and Mr. Warfel?

A. Well, as I said we were standing sideways talking with various people which were asking us questions and I was pushed against the rail which is to the left of it.

Q. What happened then?

A. The line broke and I was pushed against the rail and also pushed back. I would roughly say eight to ten feet. That is, not literally pushed, but more or less edging back.

Q. All right.

A. I couldn't hold them back.

Q. What did the people do?

A. They seated themselves in various parts of the dining room between our guests that were dining.

Q. And what happened?

A. At that time they scattered from place to place and then Mr. Warfel called the police.

[fol. 31] Q. All right. Did the police eventually come?

A. Yes, the police did come.

Q. Your witness.

Cross examination.

By Mr. Watts:

Q. Now Miss Dunlap, as a matter of fact, after these students were refused admission, didn't you go over and talk to the manager and ask is that still the policy of the restaurant?

A. The manager was right there.

Q. He was not in front, in this four to five feet area, was he?

A. Yes, sir.

Q. He was blocking the area?

A. We both were standing there when the line broke.

Q. I see. When the group broke through, twelve of them got in and you put your hands up and stopped the rest of them? Isn't that what happened?

A. I did try to stop them but the group wasn't interested in being stopped.

Q. The ones who got in just walked in and sat down? [fol. 32] A. That's right.

Q. And they didn't strike you or actually shove you, did they?

A. Yes, I was shoved.

Q. You were shoved?

A. Yes, I was standing at the front rail and I was shoved.

Q. You described it as saying not literally shoved but you, as going to take their seats they passed by you, is that right?

A. Well, actually, I was standing by the rail. The distance between four to five feet. At the top of this rail which I'm talking about the entrance way, there's a knob on this rail. I was pushed against that. Then I tried to stop them, the group from continuing on and as I said I actually was not pushed from there on but I was pushed when the line started to break. Then it was about four to five feet or maybe eight feet, I don't know.

Q. I see. Now, you refused them admission to this restaurant solely on the basis of their color, is that correct? [fol. 33] A. Yes, sir.

Q. And that you didn't refuse them admission because they were in any way disorderly?

A. Well, I wouldn't say they were mannerly.

Q. Answer my question? Did you refuse them admission because they were disorderly?

A. No.

Q. Did you refuse them admission because they weren't properly dressed?

A. No.

Q. Had they been white people they would have been seated, is that correct?

A. Yes, sir.

Q. That's all.

Mr. Murphy: I'd like to call Mr. Warfel, please.

ALBERT R. WARFEL, produced on behalf of the State, having first been duly sworn according to law, was examined and testified as follows:

By the Bailiff:

[fol. 34] Q. Your name and address?
A. Albert R. Warfel. 830 Argonne Drive.

Direct examination.

By Mr. Murphy:

Q. Where are you employed?
A. I'm no longer associated with Hooper's.
Q. Were you employed by Mr. Hooper on June 17th of this year?
A. Yes, I was.
Q. Where were you employed?
A. Charles and Fayette St.
Q. What capacity?
A. Manager.
Q. I want to direct your attention to that particular date, did something unusual happen there at the restaurant?
A. That particular afternoon, approximately 4:15 in the afternoon, I was called by the hostess in front of the restaurant where a group of people were standing. It happened to be this group plus a few others that are not here now. It has been stated, it had been stated to me, company policy, we're not, we have not integrated the [fol. 35] restaurant. I so notified— First I asked the leader of the group, which I wanted to get it centralized. I spoke to him. I told him the company policy. As I was discussing this—
Q. What was this person's name?
A. I believe it was John Quarles.
Q. Do you know which one he is?
A. The gentleman here in the uniform.
Q. Your name is Quarles? He indicated the defendant Quarles. Go ahead?
A. Well, while in the process of translating the company policy, the group broke. They brushed by us and sat at

various tables in the restaurant. After they were seated they proceeded to hedgehop.

Q. What do you mean by that, sir?

A. Well, what they do, originally they all go in, it might be four of them sit at one table. After they are all seated, they'll look around for empty tables and break and spread out to all the tables in the restaurant.

Q. So that all the empty tables were occupied?

A. No, they weren't.

[fol. 36] Q. As best as possible?

A. They were spread out as evenly as they could. At which time then, I noticed Mr. Hooper. Upon his request I notified the police.

Q. All right. Did you go out and get the police?

A. I stepped outside the restaurant looking for police. I also had the cashier call the radio car.

Q. Did the police come?

A. Yes, sir.

Q. In the presence of the police did you read the trespassing statute to the defendants?

A. Yes, I did.

The Court: I'd like to know specifically what was read?

The Witness: 577.

The Court: I'm asking you.

By Mr. Murphy:

Q. I'd like to show you Section 577 of Article 27 of the Maryland Code of Public General Laws and ask you if this is the section you read to them, sir?

A. I read the whole thing, including this.

Q. But you did read this specific section?

[fol. 37] A. Yes, sir, I did.

Q. This is the section reading "Any person or persons who shall enter upon any, cross over any land" et cetera—is that correct?

A. Yes, sir.

The Court: For the record, Mr. Murphy, I'd like to get again the section and the article.

Mr. Murphy: And that is Article 27, Section 577, is that correct?

A. That's correct.

Q. What happened after you read this section of the Maryland Code to the defendants?

A. Several of the group, they were all notified they would be arrested for trespassing, several of the group left, while others in the group here stayed, at which time we went over and got warrants and had them arrested.

Q. Warrants were obtained at the station house by Mr. Hooper, is that correct?

A. That's correct. Central.

The Court: At that time Mr. Warfel did you inform the group that unless they left they would be arrested?

[fol. 38] The Witness: That's correct.

By Mr. Murphy:

Q. Some of them did actually leave?

A. Yes, they did.

Q. But these people remained?

A. That's correct.

Q. All right. After Mr. Hooper obtained the warrants, did he come back to the restaurant?

A. Well we all come back to the restaurant.

Q. The police were there?

A. That's right.

Q. What happened then?

A. We had the people arrested.

Q. The police took all of their names, et cetera?

A. Yes, sir.

Q. Your witness.

Cross examination.

By Mr. Watts:

Q. Mr. Warfel, is it?

A. Yes.

Q. Your instructions to your hostess, your help there was that they were not to serve negroes, is that correct?

[fol. 39] A. It was company policy that we were not integrated.

Q. So that these people were refused service solely on the basis of their color, is that correct?

A. That's correct.

Q. For no other reason?

A. No, sir.

Q. That's all.

The Court: Mr. Warfel, were any of the group taken to the station house or were they just released by the officer?

A. I believe they were all taken over but then they were released from Central.

The Court: Were they taken to the station house, Central?

A. Yes, sir. I don't remember.

The Court: Do you have other witnesses?

Mr. Murphy: Yes I have the police here too, your Honor.

[fol. 40] G. Carrol Hooper, produced on behalf of the State, having first been duly sworn according to law, was examined and testified as follows:

By the Bailiff:

Q. Your name and address?

A. G. Carroll Hooper. 3501 St. Paul Street.

Direct examination.

By Mr. Murphy:

Q. Mr. Hooper, you are the owner of various restaurants around town, is that correct?

A. That's right.

Q. Do you have a restaurant located Charles and Fayette Streets?

A. Yes, I do.

Q. And that actually is owned by a corporation, is that correct?

A. Yes, sir.

Q. Hooper Food Company Inc.?

A. That's right.

Q. Are you the president?

[fol. 41] A. President.

Q. Are you the lessee of that premises there?

A. That's right.

Q. And you operate your restaurant there, is that correct?

A. Yes, sir.

Q. Or one of your restaurants?

A. That's right.

Q. Did you so operate the restaurant on June 17th of this year at that premises?

A. I did.

Q. I want to direct your attention particularly to that date sir, did something happen at your restaurant?

A. Yes, it did.

Q. About what time was it?

A. About 4:15, 4:30.

Q In the afternoon?

A. Afternoon.

Q. Well, you describe to his Honor what you observed at that time, sir?

A. I was in the rear of the restaurant where we have [fol. 42] a bar and lounge which is a distance of about a hundred feet from the front lobby. My attention was attracted by the commotion up front. When I went up there all this had happened. This group of people here entered the dining room and had seated themselves, had pushed their way through the hostess, by the hostess, and had scattered about in different tables and there were several minors in the group.

Q. Practically all of them were minors?

A. I mean juveniles, under 15, that we didn't prosecute. They were released that day at the police station.

Q. Under 16 years of age?

A. Under 16. We did not prosecute them.

Q. What were they doing when you saw them, sir?

A. Well, they scattered about, one at a table. They spread out like a fan in all sections of the dining room. These young girls that were juveniles and most of the

others had a book in their hand. They took a book out and were reading it at the table. This was about the fourth occasion that we had been visited by these people. On prior [fol. 43] occasions, particularly one that I remember, they came in. I think we were the first people in town that they tried to get in. When I came in they were all scattered. They refused to leave. It was about 4 in the afternoon. I ordered the place closed. We turned off the air conditioning and locked the door and I went around to the tables and told them we were closed and asked them to leave. They would not. There is a gentleman sitting back there named Tony Adano—

Mr. Watts: I object to this. This is another case he is referring to, if your Honor please.

The Witness: Well, I think it's pertinent to the purpose of these people visiting us at this time. What I'm going to say I believe will be pertinent to the case to show the intent and motive that these people were not coming here to eat.

The Court: Was this spoken by the man you have in mind in the presence of these defendants?

The Witness: This man back here; I set at the table with him and two other people and reasoned and talked to him why my policy was not yet one of integration and [fol. 44] told him that I had two hundred employees and half of them were colored. I thought as much of them as I did the white employees. I invited them back in my kitchen if they'd like to go back and talk to them. I wanted to prove to them it wasn't my policy, my personal prejudice, we were not, that I had valuable colored employees and I thought just as much of them. I tried to reason with these leaders, told them that as long as my customers were the deciding who they want to eat with, I'm at the mercy of my customers. I'm trying to do what they want. If they fail to come in, these people are not paying my expenses, and my bills. They didn't want to go back and talk to my colored employees because every one of them are in sympathy with me and that is we're in sympathy with what their objectives are, with what they are trying

to abolish, but we disapprove of their methods of force and pushed their way in.

Now, the leader, I have talked to Mr. Quarles, who is on this case. I have talked to him on that same line.

By Mr. Murphy:

Q. He indicated the defendant Quarles.

A. Mr. Tony Adano, another one back there. All this and three or four cases before this particular case came up. [fol. 45] They knew how I felt and I say that these people coming in and putting books down, under 15 years of age, are not coming to be served. They are trying to legislate by terror, going to force me to either serve or close.

Mr. Dearing: I object.

The Witness: So on this particular occasion—

By Mr. Murphy:

Q. Tell us about that.

A. When I got there, they had spread out to all the tables. They wanted to be seated in the rear, the side, the front, the middle and everywhere, and why. Four people at one table, all left except one and go to another table. Very evident that the purpose was to let my customers know that they are there, and why do they want them to let them know they're there? That I would like to know, when they know and have been told my policy, they are not going to be served.

Q. What happened, sir?

A. I ordered Mr. Warfel to call the police. He called the police. We read the ordinance in the presence of the police. They were asked to leave.

Q. You're referring to Article 27, Section 577?

[fol. 46] A. The one you just read to Mr. Warfel. The Lusby ordinance. Then the police called the wagon and took them down to Central. Of course we had to go.

Q. You went down and got warrants?

A. We got warrants.

Q. And you brought the warrants back?

A. We were even in Judge Kolodney's office. Before we ever issued the warrants we called up. I was reluctant to even have these people arrested and give them one more chance to leave the restaurant.

Q. They refused to leave?

A. Yes, sir. Judge Kolodney called to Mr. Watts in our presence. I didn't want to have them arrested but they refused to leave.

Q. Were they taken down to the station house?

A. They were. They were released on bond.

Q. Well, their names were taken by the police at your place of business; is that correct?

A. That's right.

Q. And then they were told to be at the station house the following morning?

[fol. 47] A. That's right.

Q. At that time they placed the bond at that time?

A. Yes, sir.

Q. But they weren't actually taken in physical custody by the police on this Friday, were they sir?

A. Well, I can't remember. They have been in about six or seven times. In fact one time they came in—

Mr. Watts: I object.

The Witness: And I think this is important too.

The Court: Yes?

Mr. Watts: I object to this, if your Honor please.

The Court: The same defendant, do you know?

The Witness: Yes, the same group.

The Court: The same defendants?

The Witness: Same defendants.

The Court: Overrule the objection. Go ahead.

The Witness: At the Shriner's Convention, at 12:30, with a hundred people waiting for seats and the bar and lounge, it's three deep and three of them come in the rear entrance, minors under 21, into a bar and lounge and we got to call the police to get them out there, blocking the [fol. 48] way, people can't get out. They couldn't have been served a drink because everyone here has testified they're under 21.

Mr. Watts: I'll object to this unless he can specifically

identify who it was. Someone who came in on another occasion shouldn't have any effect.

The Court: That's why I asked him if any of the same defendants here were in the other episode?

The Witness: Yes, sir.

The Court: Can you point out the ones?

The Witness: This man right here and that one next to him.

Mr. Murphy: He is indicating—

The Witness: That's two of them right there.

Mr. Murphy: Robert Johnson and Richard McKoy.

The Witness: They came in the bar during the Shriner's convention and we had a hundred people waiting for seats and blocked the aisle. We had to call the police to get them out. Into a bar and lounge under 21.

Mr. Murphy: Witness with you.

The Court: Mr. Murphy, I have one of two names, [fol. 49] I don't have the second.

Mr. Murphy: Richard McKoy. Robert M. Johnson.

The Court: Is it McKoy or McKay?

Mr. Murphy: K-o-y.

Cross examination.

By Mr. Watts:

Q. Mr. Hooper, you made a lot to do about the age of these people. Do you serve anyone under 16 in your restaurant?

A. What do you mean I made a lot to do about the age.

Q. Answer my question? Do you serve anybody—?

A. Before I can answer I must know what you're referring to.

Q. You made a lot to do about the fact these people were under 16?

A. I'm merely just stating I heard what they said.

Q. You do serve white people under 16?

A. Not in the bar. We serve food in the dining room.

Q. All right. You mean if a white person enters your bar— You serve meals in the bar, do you?

A. Only to people over 21.

[fol. 50] Q. You don't serve meals to a family in the bar?

A. No.

Q. When they came into your bar they were on their way to the restaurant, were they not?

A. Well, I don't know. They got as far as the door. I don't know where they were going to stop.

Q. They have to go through your bar to get in the restaurant. You stopped them at the bar?

A. The front door is a distance of fifteen feet to the dining room door. They were stopped at the dining room door.

Q. In the bar nobody asked you to serve them a drink of whiskey, isn't that correct?

A. They were not given the chance. They couldn't even get to the bar. They were three deep.

Q. Their presence in the bar have nothing to do with—

A. We have a neon sign on the entrance to the bar. That's where they came in.

Q. But you stopped them there, is that correct?

A. That's right.

Q. Now, what I'm trying to get at Mr. Hooper, you [fol. 51] gave the Court the impression these minors were in there to buy whiskey. That's not true?

A. I did not give them that impression. I'm stating the facts. I didn't get that impression.

Q. Now, when Mr. Quarles and you sat down and you told him that you would not serve him and why doesn't he leave—

A. Tony Adano and Quarles too.

Q. —didn't they then tell you they wanted to stay to demonstrate the immorality and the unfairness of your racial discrimination, isn't that correct?

A. Mr. Watts,—

Q. Answer my question?

A. I'm going to answer it.

Q. Did they tell you that?

A. Can I answer it?

Q. I don't want to get in any argument?

A. It's not an argument. I want to answer your question. I go on record as I favor what you people are trying to do and I told Quarles that.

Q. I say didn't they?

[fol. 52] A. But I don't approve of your method in trying to reach it.

Q. Didn't they say even though you won't serve them they were going to stay because they were demonstrating and assembling against your racial policies so that the sympathy of the public might come on their side? Did they explain that to you?

A. Well now, you're putting words there. I couldn't say that he said that. We had a long conversation about this thing. I told Mr. Quarles that I felt personally that it was an insult to human dignity. I sympathize with it and also told them that my customers govern my policy.

Q. Didn't they say they wanted to show your customers that people can sit peaceably and be served?

A. In other words then you're trying to tell me that Mr. Quarles has a better opinion about how I conduct my business than I do.

Q. I'm not arguing with you?

A. That's what you're saying.

Q. I'm trying to get evidence—

The Court: Just a minute. Mr. Hooper, I think it [fol. 53] would be more helpful if you didn't get too emotional. Mr. Watts wants to know what Quarles said to you was the reason these people were in your place? Did Mr. Quarles or anyone give any reason?

The Witness: Well, Mr. Quarles said in the course of our conversation— Your Honor, it's very difficult for me to say verbatim, but—

The Court: What was the substance?

The Witness: The gist of it was this: That they had gained a lot through these peaceful sitins demonstrations, particularly in the South and they felt that, I told them that, Mr. Quarles, that they had come a long way. Five years ago such a thing would be unheard of and I thought if time would take care of what they were trying to do— He said "we're not waiting for time. We're going to force this thing and we're going to accomplish it and it definitely has been proven we have gotten results by forging ahead and trying to exert our rights whether we violate the law or not."

By Mr. Watts:

Q. Didn't Mr. Quarles tell you that this was a peaceful non-violent demonstration?

[fol. 54] A. He didn't have to tell me. It was evident, other than the time he shoved the hostess aside.

Q. It was evident they were peaceful?

A. After they got seated they were peaceful. They read books. They did not want to be served food.

Q. Now, Mr. Hooper—stand up. You remember seeing this gentleman before?

A. Maybe I have. I can't remember.

Q. Mr. Mitchell, stand up?

A. Yes, sir. That's the leader. I have talked to him too.

Q. That's all we'd like to ask.

Sgt. John Sauer, produced on behalf of the State, having first been duly sworn according to law, was examined and testified as follows:

By the Bailiff:

Q. Your name and assignment?

A. Sgt. John Sauer. Central.

[fol. 55] Direct examination.

By Mr. Murphy:

Q. Sgt. Sauer, I want to direct your attention to June 17th of this year, did you receive a call or did someone ask you to come over to Hooper's Restaurant, Fayette and Charles Street here in Baltimore City?

A. Lt. Redding and I were standing on the corner, as a result of the crowd that was there on the corner when Mr. Warfel come out of the restaurant and requested we come in while he read the trespassing ordinance to these people in the restaurant.

Q. Now, did you and Lt. Redding go over to the restaurant then?

A. We did. We went inside.

Q. About what time was that, sergeant?

A. It was about 4:30.

Q. P.M.?

A. Yes, sir.

Q. And you describe to his Honor what occurred, what you observed when you went in the restaurant and what occurred thereafter?

A. When we got into the restaurant there were several [fol. 56] people sitting around at different tables. I think it was about one to a table.

Q. Were these white or colored people?

A. They were colored people.

Q. Did they appear to be older people or younger people?

A. Most of them appeared to be younger.

Q. Go ahead?

A. The general group were young. Mr. Warfel requested we stand there while he read the ordinance to them relative to the trespassing act.

Q. Article 27, Section 577 of the Maryland Code?

A. That's right, sir.

Q. And you were present when Mr. Warfel read that to the defendants?

A. Yes, I was.

Q. Go ahead?

A. After reading it to the people in the upper part of the restaurant, he requested then that they leave. They refused. So he asked his clerks and the waitresses to go about the group and get their names and addresses and [fol. 57] have them identify themselves. All of those there who did identify themselves stayed. Some refused to identify themselves at that time. After reading the ordinance upstairs we went down to the basement restaurant which is more or less of a cafeteria arrangement and the same thing followed down there. He read the ordinance down there and of the parties left. Some of them stayed and identified themselves. After this was all through the group were requested to leave again and refused. We advised them Mr. Hooper he would have to get warrants if he wished to have the people arrested. He said that he would, and he left to go the Central District. I went

down to pick up the warrants. When I got down there it seemed that Magistrate Kolodney had had some conversation with Mr. Quarles or one of the group on the telephone at the restaurant and arrangements were made whereby they could come down on Monday to a trial voluntarily.

Q. All right. Well, you then secured the warrants from the magistrate?

A. The warrants were secured but they weren't served at that time.

[fol. 58] Q. And they were not placed in custody at that time?

A. No, sir.

Q. Did you go back to the restaurant?

A. Yes, I went back. The time I went back the people had left.

Q. They had left at that time?

A. Yes, sir.

Q. All right. Now what were the names of the people that identified themselves at that time? The ones that were so requested to do so by the employees of Mr. Hooper?

Well, all right. Counsel, your Honor, has stipulated between the State and the traversers, Robert M. Bell, Lovellen P. Brown, Arimentha D. Bullock, Rosetta Gainey, Annette Green, Robert M. Johnson, Richard McKoy, Aliceteen E. Mangum, John R. Quarles, Muriel B. Quarles, Lawrence M. Parker and Barbara F. Whittaker, that they are the same individuals that were in Hooper's Restaurant on June 17th of this year. The same persons that refused to leave at that time after being refused service because of their race and that they are the people that gave their names to the employees of Hooper's Restaurant at that [fol. 59] time and that they are the same defendants on trial here today. Is that so stipulated counsel?

Mr. Watts: That is so stipulated.

Mr. Murphy: No question about the identification of the various individuals?

Mr. Watts: None whatever.

Mr. Murphy: Your witness.

Cross examination.

By Mr. Watts:

Q. Sergeant, there was no disorder while you were there?

A. No. Everybody was peaceful.

Q. Sergeant, you are a member of the City Police Department?

A. That's correct.

Q. And who pays you, the State of Maryland or the City of Baltimore?

A. That's a difficult question.

Q. But you are, you were acting as a police officer?

A. Yes, sir.

Q. Paid by either the city or the State, is that correct?

[fol. 60] A. Yes, sir.

Q. That's all.

The Court: Sergeant, do you know the overall time the group might have been in Hooper's, from the time they went in until the time they left?

The Witness: I'd say approximately an hour to an hour and a half, your Honor.

The Court: Thank you.

STATE RESTS

Mr. Murphy: Thank you sergeant. The State will rest if your Honor please.

DEFENDANTS' MOTION FOR A DIRECTED VERDICT

Mr. Watts: If your Honor please, at this time at the end of the State's case, under the rules, we'd like to submit for your Honor's consideration a motion for a directed verdict. If your Honor will read it hurriedly? Most the parts follow the same pattern.

The Court: I guess I should reserve a ruling on the motion at this time.

Mr. Watts: I'd like a ruling on the technical procedural matters, if your Honor please? Are you going to withhold your ruling on a directed verdict? Can we put on [fol. 61] some evidence and you rule on it later?

The Court: Yes.

JOHN R. QUARLES, SR., produced on his own behalf, having first been duly sworn according to law, was examined and testified as follows:

By the Bailiff:

Q. Your name and address?
A. John R. Quarles, Sr. 409 W. Lafayette Avenue.

Direct examination.

By Mr. Watts:

Q. Mr. Quarles, are you one of the defendants?
A. Yes, sir.
Q. And you are a student at Morgan College, is that correct?
A. Yes, sir.
Q. What year are you in now?
A. My second year at Morgan.
Q. Are you a member of a civic interest group that [fol. 62] staged this; how do you classify this, demonstration, is that right?
A. Yes, sir.
Q. Now tell his Honor, I think Mr. Hooper referred to the fact that he talked to you when you first went in the restaurant, is that correct?
A. Well first, after entering the restaurant I was greeted first by the hostess and she asked me, as she said, "Can I help you please?" I asked her, I said "Well, we would like a table for all of us". She said "I'm sorry but we haven't integrated as yet".
Q. At that time were you prepared to pay for meals if all of you had been served?
A. Well, we have a treasury. At that time I had some fifty-five or sixty dollars in my pocket.
Q. Go ahead?
A. And after she stated she would not serve us because she was an employee there and she could not go over the orders of Mr. Hooper I asked her, well, why was it that Mr. Hooper had a segregated restaurant, didn't he think that we were of a caliber, of the caliber of human beings

[fol. 63] to be served as humans. She stated she had nothing to do with this, she was only a person who was employed there. Later, about two or three minutes later the manager walked up to me and he proceeded to explain to me Mr. Hooper's policy of segregation. At the time that he was explaining this to me, we all had our backs turned to the group of students who were seeking service at the restaurant, and they were in a line waiting to be seated and at the time we were talking and had our backs to them, some of the students proceeded to come up the flight of steps, two or three steps and seat themselves at tables. Well, after the manager and the hostess became aware of this they ran over, which was only about two or three steps and throwed up their arms to block the students that were coming in. The students who were blocked, they had been instructed prior to entering the restaurant if anything came about where they were blocked or obstructed by any of the employees of the restaurant they were to stop, stand still and not force their way into the restaurant or force their way to be seated. This procedure they carried out. The students who were not able to be seated in the upper part of the restaurant went [fol. 64] downstairs to the grill and after the students were seated upstairs, about 10 or 12 students were seated upstairs and about the same number downstairs, Mr. Hooper came in and he proceeded to talk to me about this. He was telling me how he had negro employees in his restaurant and he had negroes in his business, for the duration of his business ever since he had been in business. I was asking him, well, why wasn't it these negroes he thought so much of weren't capable of sitting at his tables to eat? He said, well, it's because my customers don't want to eat with negroes. I then asked him why was it or how was it that he knew that his customers did not want to eat with negroes? He couldn't answer that question and he asked me why we were sitting there. I explained to him we were there to be served and also to let his customers become aware of the problem of segregation in Baltimore City and then he proceeded to say, give me his views on how he felt about it. He didn't believe this was the way to do it and so forth and so on. I ex-

plained to him then when he said this, we were not there to interrupt his business and we were not there to distort [fol, 65] or destroy his business. We were simply there seeking service as humans and also as citizens of the United States of America.

Q. Now you describe this as a demonstration. Were you there as pickets in the process of assembling in protest against these policies as such?

A. Yes, we were there and there were also some pickets who were outside picketing with placards, stating Mr. Hooper's policy so that the persons passing by or customers coming in would realize that Mr. Hooper had a segregated policy in his restaurant?

Q. Those who went in were part of those who were outside?

A. That's right.

Q. No further questions.

Cross examination.

By Mr. Murphy:

Q. Well your actual purpose then was to demonstrate rather than to eat, isn't that correct?

A. The actual purpose first of all was to eat. After being refused service, that was when the demonstration came about.

[fol. 66] Q. Well is it normal for you when you go out to eat some place to get together a group of fifty persons? Is that the number that you have at a dinner party when you go out usually?

A. Well I have known this group to eat at dinner parties as many as 33 students.

Q. Well I mean actually, you went over there and the group went over there to demonstrate, isn't that correct?

A. No. First of all we went there to eat.

Q. When asked by your counsel you said that it was a demonstration at this restaurant, isn't that correct?

A. Yes, that's what it turned out to be, a demonstration.

Q. You characterized it as a demonstration, right? Is that correct?

A. I don't quite get your question.

Q. You characterized it to your counsel as a demonstration, that you were demonstrating at the restaurant, isn't that right?

A. We were demonstrating after being refused.

[fol. 67] Q. You went there as pickets?

A. We went there with students waiting, seeking service.

Q. Did they have picket signs?

A. The picket signs were not brought out until after we were refused service. They were sent for.

Q. Well, you had already had these signs prepared did you not to use to picket?

A. Those signs were prepared for the Hecht Company Rooftop Restaurant.

Q. Now, where did your group meet before you went over there?

A. Where did the group meet?

Q. Yes?

A. The group met at Dunbar High School, around 3:30 p.m.

Q. And did you organize the group at that time?

A. No, I did not.

Q. And tell them where you were going to go?

A. I didn't organize the group. Mr. Bell stated there were some students, his Student Council, he was President [fol. 68] of the Student Council at Dunbar High School, and I stated to him that some of the students from Morgan were going downtown to seek service from a restaurant. I did not give him a specific restaurant. He said he had students in his student council, members of his student council who wanted to go along.

Q. To swell your numbers down at the restaurant, isn't that correct?

A. I don't quite follow your question.

Q. It's very simple. You were getting additional people from the high school so that you would have more people in your group when you went downtown?

A. No. This all came about at a conference where Mr. Bell was present. He said he'd like his students to attend.

Q. In order to add to your number when you went downtown?

A. It did make the number larger.

Q. That's what I mean. Isn't that why you wanted them to go?

A. I wanted them to go to seek service.

Q. Do you know if any of the young girls had money [fol. 69] to pay for the meals in the restaurant?

A. Yes, sir.

Q. They all—

A. They all had their own individual money. I asked them prior to leaving from the high school.

Q. You only know what someone told you, right? You don't know if they had any money or not of your own knowledge?

A. That's true. I only go along with what they said. I don't think they'd have a reason to tell an untruth.

Q. When you went there, did you expect to get a separate table for each person that went in the restaurant? Did you?

A. Well I went there and I seated myself at a table. Mr. Parker joined me at my table and it was up to each student whom they decided they want to sit at a table with.

Q. I see. They were going from table to table, were they not?

A. No, they were not. Once they seated themselves they remained at the table they were seated in.

Q. Well, didn't they try to occupy as many tables as [fol. 70] they could?

A. No.

Q. Weren't there plenty of tables where only one person was sitting?

A. There were plenty of tables. If I'm not mistaken there were 12 to 14 empty tables in the restaurant.

Q. You say this was not calculated to interrupt Mr. Hooper's business?

A. No, it was not.

Q. By taking seats at separate tables it was not calculated to interrupt his business?

A. No it was not calculated to interrupt his business.

Q. Why did some of the students go downstairs? Didn't you say they went downstairs because they couldn't be seated upstairs?

A. After they were blocked forcibly by the manager and hostess, they proceeded downstairs to seek service.

Q. Well, wasn't it the purpose in going there was to occupy as many tables as you could? Isn't that correct?

A. No. If that were the purpose, if you, if that was the purpose in mind and having an idea that he had some 30 [fol. 71] to 35 tables, it wouldn't make any sense at all with that in mind to go in with 12 to 24 students.

Q. Well you did occupy as many tables as you all could, didn't you?

A. No. As I said each student seated him or herself with the persons they decided to go to eat with. As I said I was joined by Mr. Parker.

Q. And after you were seated did you give your order to anybody and tell anybody what you wanted to eat?

A. After I was seated there was no more discussion until Mr. Hooper came up and seated himself beside me. Then his son came after he did, about five minutes after he sat down at the table with me and we had a discussion on the same thing.

Q. Well, did you ask for a menu when you got seated?

A. I asked for a menu when I walked in.

Q. You say you asked to be seated, right? But after you were seated did you ask for a menu or a waitress to come to you?

A. The waitress came over and informed me she could not serve me.

[fol. 72] Q. Do you know if any of these other people in your group asked for a menu?

A. No, I don't know if any of the other group—

Q. Really you didn't go in there to get served at all?

Mr. Watts: I'll object to this, if your Honor please. The reason, if your Honor please, the State's case indicates Mr. Hooper advised these students he was not going to serve, which makes it a useless gesture to order. That is his case he's trying to make a lot out of. Mr. Hooper said he wasn't going to serve him.

The Court: I think the last question is in order, although I think it's been answered before.

By Mr. Murphy:

Q. All right. Let me ask you this. You were asked to leave, were you not?

A. Yes, sir.

Q. All of you?

A. Yes, sir.

Q. And Mr. Warfel, the manager, read the statute to you on trespassing?

A. He did.

[fol. 73] Q. And as a matter of fact some of your group did leave?

A. Yes, they did.

Q. But you and these other young people that were with you refused to leave, is that correct?

A. We remained still seeking service. We were in hopes that Mr. Hooper would change his policy and serve us.

Q. You refused to leave when you were asked to leave, is that right?

A. Yes, sir. I stated why I refused to leave.

Q. Mr. Hooper told you or one of the employees told you if you did not leave that they would try to have the police place you under arrest?

A. That's right, they did.

Q. And you and these others still refused to leave, right?

A. Still sat there seeking service.

Q. You also have referred to this, these happenings at Mr. Hooper's restaurant as an assembly, is that correct?

A. No, I don't recall.

Q. An assembly of students? I believe your counsel [fol. 74] asked you if you had pickets there, whether you were assembling there and your answer was yes. You were trying to assert your right to assemble under the constitution, is that right, your free right to assemble?

A. That's right.

Q. Well, you were trying to use Mr. Hooper's restaurant to assemble on private property to assemble your group, is that it?

A. Well isn't it true they also have—

Q. I'm not here to answer the questions. You're here to answer the questions. My question to you is this; you

were using Mr. Hooper's restaurant to assert your right to free assembly? Is that what you're telling the Court?

A. That's right.

Q. On private property?

A. That I don't know about.

Q. All right. I have no further questions.

Redirect examination.

By Mr. Watts:

Q. Now Mr. Quarles, you remained even though you knew you were going to be arrested?

[fol. 75] A. Yes, sir.

Q. Is that part of your technique in these demonstrations?

A. Yes, sir.

Q. Why would you be willing to be arrested?

A. Because I think arrest is a small price to pay for your freedom as a human being.

Mr. Murphy: Well, I'll have to move that that be stricken out, your Honor?

The Court: No, I'll permit it.

By Mr. Watts:

Q. Now you have been in other restaurants before is that correct?

A. That's right.

Q. And you sat there like you did in Mr. Hooper's restaurant?

A. That's right.

Q. Did the business continue as usual?

Mr. Murphy: Now, I'm going to object to that.

Mr. Watts: Well, he raised a question about interrupting Mr. Hooper's business. He said he went there not to interrupt. I want to show he's been demonstrating and [fol. 76] hasn't interrupted—

The Court: That would go to the policy.

Mr. Watts: He made a lot to do, stating the fact this was intended to interrupt Mr. Hooper's business. I'm try-

ing to show this has been done on many occasions when business was not interrupted so that by following through it indicates this was not the intention of these people.

Mr. Murphy: I still object to it.

The Court: I'm not sure it's admissible, Mr. Watts, but I'll let him answer it.

By Mr. Watts:

Q. Have you been on other demonstrations and sat like this and business continued?

A. Yes, sir.

Q. People sat and ate and were served, is that correct? You have also been in restaurants as you did on this particular occasion and been served?

A. Yes, sir.

Q. You were informed then that the policy had been changed?

A. That's right, sir.

Q. Did you have this in mind when you went to Mr. [fol. 77] Hooper's?

A. Yes, sir. A number of places we went to seeking service, even maybe prior to entering, the restaurant was segregated but after entering the manager has changed his policy and served us right then and there.

Q. Are you a member of the R.O.T.C. at Morgan State College?

A. Yes, I am.

Q. After you graduate, what are your plans?

Mr. Murphy: Well, I'll have to object.

The Court: Yes. I sustain that.

Mr. Watts: That's all.

Q. Mr. Quarles, you knew you were under arrest, is that right, by the police department?

A. Yes, sir.

Q. And you appeared on Monday voluntarily, in the station house?

A. Voluntarily.

Q. To submit to an arrest by the State, is that correct?

A. That's right.

[fol. 78] Q. All right, that's all.

ROBERT JOHNSON, produced on his own behalf, having first been duly sworn according to law, was examined and testified as follows:

By the Bailiff:

Q. Your full name and address?
A. Robert Johnson. 1711 N. Castle St.

Direct examination.

By Mr. Watts:

Q. Are you a student?
A. I'm a student at Morgan State College.
Q. What year are you in?
A. Freshman.
Q. You admit that you were there on the date alleged in the indictment?
A. I was there.
Q. Have you ever been in any Hooper's any other occasion?
A. No, I haven't.

[fol. 79] Cross examination.

By Mr. Murphy:

Q. When you went to Mr. Hooper's restaurant on this day, how much money did you have in your pocket?
A. I had nineteen dollars in my pocket.
Q. When had you eaten lunch that day?
A. I hadn't eaten lunch.
Q. You didn't eat lunch? You didn't go over to Mr. Hooper's to eat, did you?
A. Yes, I did.
Q. You went over as part of this demonstration actually?
A. I went there seeking service as Mr. Quarles stated.
Q. Your primary purpose was to demonstrate?
A. No. Only if I had been refused service was I to demonstrate.
Q. You anticipated you were going to be refused service

because the pickets signs had already been prepared, hadn't they?

A. No. I hadn't anticipated any such thing.

Q. I see. At the table you sat at, who sat with you or [fol. 80] did you sit by yourself?

A. I sat downstairs in the Grill and there were several others at the counter which I was seated.

Q. All right. No further questions.

Redirect examination.

By Mr. Watts:

Q. In other words, you never went through that little opening there where the hostess was standing?

A. No.

Q. How many of you who are defendants in this case went downstairs and did not go through that place?

A. About 12 of us.

Q. Who are defendants here of this group?

A. All of them.

Q. Were downstairs with you?

A. No, not all of them.

Q. Approximately how many?

A. About six.

Q. That's all.

[fol. 81] Richard McKoy, produced on his own behalf, having first been duly sworn according to law, was examined and testified as follows:

By the Bailiff:

Q. Your full name and address?

A. Richard McKoy. 159 N. Colvin St.

Direct examination.

By Mr. Watts:

Q. Mr. McKoy, just one question I'd like to ask you too. Mr. Hooper pointed out you as having been to his restaurant

on an occasion other than alleged in the indictment. Have you been to Mr. Hooper's restaurant on any other occasion?

A. No, I haven't.

Q. Are you a student?

A. Yes, sir.

Q. Where are you a student?

A. Dunbar High School.

Q. What year are you in?

A. I'm a senior.

[fol. 82] Cross examination.

By Mr. Murphy:

Q. When did you first become associated with these demonstrations in restaurants? When did you first get interested in that?

A. Well, the first time I had heard about dining at Hooper's was, at least dining at a restaurant was when Robert Bell said that we were, we would, he would, well, said that there were some students went into Hooper's to seek service. Well, I agreed that I'd like to go because, well, I hadn't eaten lunch for a while. Since we were going to eat I said I'd go too.

Q. So you thought you'd go down and get a little lunch down at Hooper's?

A. That's right, a little lunch.

Q. But you thought you would go down with this big group, is that right?

A. Since they were all friends of mine.

Q. I see.

A. Yes, sir, they—

Q. When did you first know,— My question merely was this. Maybe I didn't make it quite clear to you. Have you [fol. 83] ever previously demonstrated in any other restaurants?

A. No, I hadn't.

Q. As a matter of fact wasn't there or isn't there some sort of instruction that they give you before you go down to the restaurant as to how to conduct yourself?

A. Instructions? I don't understand.

Q. Well, don't Mr. Quarles or doesn't Mr. Quarles or whoever is in charge of the group tell you to act peacefully when you go in a restaurant?

A. Well, I think the only thing stated is that he wants to make sure that each person is dressed properly. While, you know—

Q. I see. Before you ever go down to lunch at Hooper's, Mr. Quarles or whoever is in charge of the group asked you to be dressed properly, right?

A. Yes, sir.

Q. To conduct yourself peacefully in the place, is that right?

A. He didn't say anything about conducting myself.

Q. Not you in particular. I mean the group in general when he is addressing the group, doesn't he say that?

[fol. 84] A. Well, as I remember, well, it was quite a while ago. He said that on entering, on entering the restaurant we weren't to force our way through anyone.

Q. I see. Well, I mean he does give you, like a football coach would do before the game, he gives you instruction on how to operate when you go down there, right?

A. Not exactly operate. He gives us—

Q. How to conduct yourself?

A. The rules of etiquette.

Q. The rules of etiquette? I see. Does he give you money to pay for the meals?

A. No, he doesn't.

Q. Did you have any yourself?

A. Yes, I did.

Q. I'm not going to ask you how much. Well then, before you ever do go down to the restaurant they tell you, they give you the guide posts or the rules on what to do when you get there?

A. What is this, a sheet or something?

Q. I don't mean a sheet. They do instruct you, Mr. Quarles or whoever is in charge of the group, get the group [fol. 85] together and gives them a pep talk and tells them what to do?

A. I previously stated.

Q. Are you not instructed to sit at many tables or—

A. No.

Q. You occupied a table by yourself?

A. Yes, I did. Anyone was invited to come and sit with me if they like.

Q. If you were going to lunch and you wanted to go with this big group of 25 or more people, why did you sit at a table by yourself? Had somebody done something to offend you that you had to leave the group?

A. No. No one had done anything to offend me. I just sat at the first table empty that I saw.

Q. You sat at a table by yourself?

A. Yes, sir.

Q. Nobody else sat with you even though—

A. Unconsciously I sat at a table.

Q. Even though you had all been assembled to go, before you went down, you didn't sit with anybody, is that correct?

[fol. 86] A. No, I didn't.

Q. And did you attempt to place an order?

A. Well, I had thought that when you sit in a restaurant or at least when you enter a restaurant and have a seat, someone would come to the table and ask you if—give you a menu and ask you what you would like.

Q. Did you ask for a menu? Did you ask for service? Did you place a specific order for any food?

A. Well, thinking as I did, I didn't think it was necessary for me to call anyone's attention to the fact that I wanted to be served.

Q. Well, now, Mr., I think it was Mr. Warfel did read this Maryland Statute on trespassing, is that correct?

A. Yes, he did.

Q. And didn't he tell you and the other people in the restaurant that if you did not leave peacefully, after he had read the statute, that you were going to be placed under arrest?

A. Yes, sir.

Q. And you still refused to leave at that time, is that correct?

[fol. 87] A. Yes, [redacted] I refused because, well, I think my reason is the same as Mr. Quarles.

Q. Well in any event you refused?
A. Yes, I refused.

Redirect examination.

By Mr. Watts:

Q. While you were there did they serve any white people?
A. Yes, sir. There was one man sitting in the restaurant.
Q. Were any ladies in the downstairs where you were?
A. I was upstairs.
Q. Well, he was served is that correct?
A. Yes, he was.
Q. All right.

PHILLIP H. SAVAGE, produced on behalf of the defendants, having first been duly sworn according to law, was examined and testified as follows:

[fol. 88] By the Bailiff:

Q. Your full name and address?
A. Phillip H. Savage. 3226 Carlisle Avenue.

Direct examination.

By Mr. Watts:

Q. Mr. Savage, are you still a member of a civic interest group?
A. Yes, sir.
Q. And Mr. Hooper who previously testified in this case made mention of the fact at the time that the Shriners were there, a large group of teenagers or subteen-agers, people under 16, entered his restaurant. Now first of all, were you there on that occasion?
A. Yes, sir.
Q. When the Shriners were there?
A. Yes, sir.
Q. Tell his Honor what happened on that occasion?

A. We had just come from the Honorable Mayor Grady's office seeking additional mobile registration units at Cherry Hill and Lafayette market. After leaving Mayor Grady's office, we went to Mr. D'Alesandro's office to discuss this [fol. 89] matter with him further. When we left Mr. D'Alesandro's office I think there were 12 of us altogether.

Q. Just a moment. For the record, Mr. D'Alesandro you're referring to—

A. Supervisor of Elections. We proceeded up Fayette Street and we decided we would go in Hooper's and eat. Since there were a great number of us, we divided. One group went in the side door, the other group went in the front door.

Q. How many of you were there?

A. I think there were 12 altogether. I think, I'm not sure of the exact number. When we entered through the revolving doors, three or four of us were able to actually get into the premises of the restaurant at that time, because the gentleman, I don't recall who he was, proceeded to hold the door, blocking a number of us from entering. In fact he tried to push the door back causing one girl's arm to be caught in to the door but after realizing this he did release it. The three or four who were in, were being pushed around and trying to be removed from the restaurant, and the gentleman who was standing at the door was [fol. 90] telling the young lady to try and get a police officer. Well, finally he went out the revolving door, enabling the rest of the group to enter while they went for the police officer who was at the corner there directing the traffic. This officer proceeded to push his way through the door and we were then entered or seated on a couch that—there were three of us seated and three standing. This officer then told us with an abusive manner—

Mr. Murphy: I'll object to the characterization. He can tell us what it is?

The Witness: The officer then said to us that we had to leave.

By Mr. Watts:

Q. What I'm trying to get at, what was the age group of the people?

A. Well, most of us were over 21.

Q. Was there anybody under 16?

A. Oh no, definitely not.

Q. Do you remember who the youngest one was?

A. I really don't know who is the youngest because I don't know their ages.

Q. There wasn't anybody under 16?

[fol. 91] A. I don't think there were anybody under 16 as I know of.

Q. Who all left at that time?

A. What happened was that this officer finally asked the lady to read the ordinance. After reading the ordinance we did leave. The first group. I'd like to say this Mr. Watts, because I think it's important. When we got on the outside, we were out and then the police officers came, seemingly because there was a riot or something. When the other group was read out we left.

Q. All right.

Cross examination.

By Mr. Murphy:

Q. Well then, the altercation was such inside of the restaurant that a number of police came, as you have said, as if there were a riot in the place, is that correct?

A. It seemed that way because of a number of officers.

Q. Don't you think your conduct and the conduct of your associates at the time amounted to a breach of the peace?

[fol. 92] A. It did not.

Q. Well, you were forcing your way physically into this restaurant after the owners had told you that they didn't want you in there?

A. We never forced our way in there. There were three of us who got in. The others were forcibly prevented from coming in.

Q. Well, you were all trying to push your way in, weren't you?

A. No, we were not. At no time. When the door was held, we stopped.

Q. Well, you were describing somebody being caught in the door and everything else, weren't you?

A. Yes, but this was only that they were trying to enter the restaurant at the time.

Q. And the owners or their agents were trying through physical force to keep you from entering, right?

A. Only that— What I mean by physical force that he held the door preventing it from revolving.

Q. The people that were with you, although you had been told you could not enter, and it was obvious to you [fol. 93] that physical force was going to be used by the owner and his agents to keep you from entering, you still attempted to enter and did as a matter of fact enter, isn't that correct?

A. We only entered after the door was moved by the police officer allowing us to get in.

Q. And you don't feel that this contributed, your conduct contributed to a breach of the peace, sir?

A. In no way.

Q. I have no further questions.

Mr. Watts: Of course we'd like to impose an objection to this manner of cross examination on the ground that Mr. Savage isn't on trial and this was on another occasion and not on the 17th. Let the record indicate that.

The Court: Very well.

Mr. Watts: That's extraneous cross-examination.

Mr. Murphy: I didn't put him on. Counsel put him on. I just cross-examined him exactly about the same things that he asked him about in direct examination.

[fol. 94] Redirect examination.

By Mr. Watts:

Q. You had no reason— You didn't call the police?

A. No, we didn't.

Q. And actually any conflict that was, was a breach of the peace is when the police came—

Mr. Murphy: I object to that.

The Court: I didn't hear—

Mr. Watts: I said the only breach of the peace if any, was when the police came?

A. When the police came.

Q. At that time—

A. This caused more excitement than our presence.

Q. You had left?

A. Yes, we had left.

Q. All right. That's our case, your Honor.

The Court: I think a reference was made by this witness and others to the reading of the ordinance? It's agreed the ordinance was really a statute?

Mr. Murphy: Yes, sir.

Mr. Watts: That's our case.

Mr. Murphy: The State has no rebuttal.

[fol. 95]

RENEWAL OF DEFENDANTS' MOTION FOR A DIRECTED VERDICT

Mr. Watts: Of course we move again for our motion for a directed verdict.

The Court: I'll reserve my ruling. I think you would like to have an opportunity to present a brief?

Mr. Watts: I'd like to be heard briefly now. It might be we could submit our brief at a later date and argue it at a later date.

The Court: I think it might be better.

(Conclusion of the Testimony)

[fol. 96] [File endorsement omitted]

IN THE CRIMINAL COURT OF BALTIMORE, MARYLAND

PART III

Ind. No. 2523Y

STATE OF MARYLAND

vs.

ROBERT MACK BELL, LOVELLEN P. BROWN, ARIMENTHA D. BULLOCK, ROSETTA GAINEY, ANNETTE GREEN, ROBERT M. JOHNSON and RICHARD McKOY, ALICETEEN E. MANGUM, JOHN R. QUARLES, SR., MURIEL B. QUARLES, LAWRENCE M. PARKER and BARBARA F. WHITTAKER

APPEAL—Filed April 12, 1961

Mr. Clerk:

Please enter an appeal of the conviction of the Defendants, in the above-entitled case to the Court of Appeals of Maryland.

Robert B. Watts, 1520 E. Monument Street, Baltimore 5, Maryland;

Juanita J. Mitchell, 1239 Druid Hill Avenue, Baltimore 17, Maryland;

Tucker R. Dearing, 627 N. Aisquith Street, Baltimore 2, Maryland, Attorneys for Defendants.

[fol. 97] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 98]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—April 5, 1962

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including June 8, 1962.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 5th day of April, 1962.

[fol. 99]

SUPREME COURT OF THE UNITED STATES

No. 167—October Term, 1962

ROBERT MACK BELL, et al., Petitioners,

vs.

MARYLAND.

ORDER ALLOWING CERTIORARI—June 10, 1963

The petition herein for a writ of certiorari to the Court of Appeals of the State of Maryland is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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Office Supreme Court, U.S.
FILED
JUN 8 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1961

No. ~~1026~~ [redacted]

#12
1963

ROBERT MACK BELL, LOVELLEN P. BROWN, ARIMENTHA D. BULLOCK, ROSETTA GAINEY, ANNETTE GREEN, ROBERT M. JOHNSON, RICHARD McKOY, ALICETEEN E. MANGUM, JOHN R. QUARLES, SR., MURIEL B. QUARLES, LAWRENCE M. PARKER and BARBARA F. WHITTAKER,

Petitioners,

—v.—

STATE OF MARYLAND.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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IN THE

Supreme Court of the United States

October Term, 1961

No. .....

ROBERT MACK BELL, LOVELLEN P. BROWN, ARIMENTHA D. BULLOCK, ROSETTA GAINEY, ANNETTE GREEN, ROBERT M. JOHNSON, RICHARD MCKOY, ALICETEEN E. MANGUM, JOHN R. QUARLES, SR., MURIEL B. QUARLES, LAWRENCE M. PARKER and BARBARA F. WHITTAKER,

Petitioners,

—v.—

STATE OF MARYLAND.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

Petitioners pray that a writ of certiorari issue to review the judgment of the Court of Appeals of Maryland entered in the above-entitled case on January 9, 1962.

Citations to Opinions Below

The opinion of the Court of Appeals of Maryland is unreported as of yet and is set forth in the appendix hereto, *infra*, pp. 6a-8a. The opinion of the Criminal Court of the City of Baltimore is unreported as of yet and is set forth in the appendix hereto, *infra*, pp. 1a-5a.

Jurisdiction

The judgment of the Court of Appeals of Maryland was entered January 9, 1962, *infra*, pp. 6a-8a. On April 5, 1962, Mr. Justice Black signed an order extending petitioners' time for filing petition for writ of certiorari to and including June 8, 1962.

The jurisdiction of this Court is invoked pursuant to Title 28, United States Code, §1257(3), petitioners having asserted below and asserting here deprivation of rights, privileges and immunities secured by the Constitution of the United States.

Questions Presented

Whether Negro petitioners were denied due process of law and equal protection of the laws as secured by the Fourteenth Amendment:

1. When arrested and convicted of trespass for failing to leave a public restaurant which in accordance with community custom adhered to a policy of excluding Negroes.

2. When petitioners were denied freedom of expression secured by the Fourteenth Amendment when convicted of trespass upon refusal to leave a public restaurant while engaging in a sit-in protest demonstration.

3. When said convictions were obtained under a statute so vague as to give no fair warning that their conduct was prohibited.

Constitutional and Statutory Provisions Involved

1. This case involves §1 of the Fourteenth Amendment to the Constitution of the United States.

2. This case involves Article 27, §577 of the Code of Maryland (1957), which states:

> Any person or persons who shall enter upon or cross over the land, premises or private property of any person or persons in this State after having been duly notified by the owner or his agent not to do so shall be deemed guilty of a misdemeanor, and on conviction thereof before some justice of the peace in the county or city where such trespass may have been committed be fined by said justice of the peace not less than one, nor more than one hundred dollars, and shall stand committed to the jail of county or city until such fine and costs are paid; provided, however, that the person or persons so convicted shall have the right to appeal from the judgment of said justice of the peace to the circuit court for the county or Criminal Court of Baltimore where such trespass was committed, at any time within ten days after such judgment was rendered; and, provided, further, that nothing in this section shall be construed to include within its provisions the entry upon or crossing over any land when such entry or crossing is done under a bona fide claim of right or ownership of said land, it being the intention of this section only to prohibit any wanton trespass upon the private land of others.

Statement

Petitioners, twelve Negro students, were arrested for engaging in a sit-in protest in a Baltimore, Maryland restaurant (Tr. 3-5), and were convicted of trespass in violation of Article 27, Section 577 of the Maryland Code, 1957 ed.

A group of fifteen to twenty Negro students (Tr. 7) including petitioners, entered Hooper's Restaurant, Baltimore about 4:15 p.m., June 17, 1960 (Tr. 7). In the lobby of the restaurant, the hostess, acting on the orders of Mr. Hooper, the owner, told them: "I'm sorry, but we haven't integrated as yet" (Tr. 7, 8). She later testified that the group was properly dressed, and that, had they been white people, they would have been seated (Tr. 14).

> Q. . . . "Now, you refused them admission to this restaurant solely on the basis of their color, is that correct? A. Yes, sir" (Tr. 13-14).

Similar admissions were made by the manager (Tr. 20). The petitioners took seats at tables both in the main dining room and in a lower-level cafeteria (Tr. 16). At the time, the restaurant manager was explaining to a leader of the group that the restaurant's policy prohibits service to Negroes (Tr. 16, 43-44). While many of the group sat one to a table, this action did not nor was it intended to interfere with the service of other customers (Tr. 51-52).

At the owners' request, police were called and the State trespass statute was read to the group (Tr. 17), some of whom left the premises (Tr. 18). Warrants were obtained against the others who failed to leave after an additional warning (Tr. 18-19).

Petitioners waived preliminary hearings in the Magistrates' Court, and were indicted by the Grand Jury of

Baltimore City and found guilty of trespass after trial without jury in the Criminal Court of Baltimore. Each petitioner was fined $10.00, which fine was suspended because as the Trial Court found, " . . . these people are not law-breaking people; that their action was one of principle rather than any intentional attempt to violate the law." Petitioners appealed to the Maryland Court of Appeals which affirmed.

Mr. Hooper, the restaurant owner, testified, "I wanted to prove to them it wasn't my policy, my personal prejudice, but that I'm at the mercy of my customers" (Tr. 25). "I go on record as I favor what you people are trying to do . . . but I do not approve of your method in trying to reach it" (Tr. 32-33).

A leader of the group testified that they had gone to the restaurant hoping to be served (Tr. 45); that while they knew Hooper's policy was to serve only whites, eating places sometimes changed their policies on the spot when the group presented itself and requested service (Tr. 57-58). Having been refused service, petitioners proceeded to inform the public of the discriminatory nature of Hooper's policy (Tr. 46). Some began picketing outside of the restaurant (Tr. 46) while others sought a similar goal by sitting quietly at the tables waiting to be served.

How the Federal Questions Were Raised and Decided Below

At the close of the State's case in the trial court and again at the conclusion of petitioners' case, petitioners moved for a directed verdict in their favor (R. 41, 76). While the grounds upon which these motions were based do not appear in the record, it is clear from the opinion of the Criminal Court of the City of Baltimore, *infra*, pp. 1a-5a, and the

opinion of the Court of Appeals of Maryland, pp. 6a-8a, that federal constitutional questions were properly raised in the Courts below and decided adversely to petitioners' contentions.

The Court of Appeals of Maryland summarized petitioners' contentions as follows:

> "The appellants contend that the State may not use its judicial process to enforce the racially discriminatory practices of a private owner, once that owner has opened his property to the general public, and that the Maryland Criminal Trespass Statute, although constitutional on its face, has been unconstitutionally applied" (*infra*, p. 7a).

> "The appellants further contend, however, that the Maryland Statute, as applied, denies to them the freedom of speech guaranteed under the First and Fourteenth Amendments to the United States Constitution" (*infra*, pp. 7a-8a).

The Court of Appeals of Maryland explicitly rejected petitioners' constitutional objections, *infra*, pp. 7a-8a, holding:

> "We find it unnecessary to dwell on these contentions at length because the same arguments were fully considered and rejected by this Court in two recent cases, *Drews* v. *State*, 224 Md. 186, and *Griffin & Greene* v. *State*, 225 Md. 422. . . . and that the statutory references to entry upon or crossing over, cover the case of remaining upon land after notice to leave."[1]

---

[1] Both *Drews* v. *State* (No. 840, 1960 Term; renumbered No. 71, 1961 Term) and *Griffin* v. *State* (No. 287, 1961 Term) are sit-in cases pending before this Court.

The Court further held, *infra*, p. 8a, that:

> "On principle, we think the right to speak freely and to make public protest does not import a right to invade or remain upon the property of private citizens, so long as private citizens retain the right to choose their guests or customers. We construe the *Marsh* case, supra, as going no further than to say that the public has the same right of discussion on the sidewalks of company towns as it has on the sidewalks of municipalities. That is a far cry from the alleged right to engage in a 'sit-in' demonstration."

REASONS FOR GRANTING THE WRIT

I.

The Decision Below Conflicts With Decisions of This Court Which Condemn the Use of State Power to Enforce a State Custom of Racial Segregation.

The record in this case clearly shows that the petitioners were refused service, ordered to leave the Hooper Restaurant, and arrested and convicted of a crime because they were Negroes. Without dispute, the practice of the Hooper Restaurant was to open its doors to the public and stand ready to serve food to white persons and to refuse such service to Negroes. It is also apparent that the arrests were made in support of this discrimination, and that the trial court convicted petitioners on evidence plainly indicating that race, and race alone, was the basis for the order to leave and the consequent arrest for failing to leave. This is thus a case where the difference in treatment to which petitioner has been subjected is clearly a racial discrimination.

There are several dominant and relevant components of action by state officials in the chain of events leading to appellant's conviction and punishment for violating the racially discriminatory customs. Here, as in all criminal prosecutions, there is action by state officers in the persons of the police, prosecutors and judges; the official actions of such officers are "state action" within the meaning of the Fourteenth Amendment. The subject of judicial action as "state action" was treated exhaustively in part II of Chief Justice Vinson's opinion in *Shelley* v. *Kraemer*, 334 U. S. 1, 14-18; cf. *Boynton* v. *Virginia*, 364 U. S. 454; policemen (*Screws* v. *United States*, 325 U. S. 91; *Monroe* v. *Pape*, 365 U. S. 167) and prosecutors (*Napue* v. *Illinois*, 360 U. S. 264) are equally subject to the restraints of the Fourteenth Amendment.

Ever since the *Civil Rights Cases*, 109 U. S. 3, 17, it has been conventional doctrine that racial discrimination when supported by state authority, violates the Fourteenth Amendment's equal protection clause; and since *Brown* v. *Board of Education*, 347 U. S. 483, it has been settled that racial segregation constitutes a forbidden discrimination.

However, in this case the involvement of the public law enforcement and judicial officers in the racial discrimination practiced against petitioner, through their use of the state's criminal law machinery to support and enforce it, is now sought to be excused because, it is said, there is also "private action" involved, and the state is said to be merely enforcing "private property" rights through its criminal trespass laws.

It is said that only "trespassers" and not Negroes are punished by the state, and thus it is private property rights and not racial discrimination that is being preserved by the state's officers and laws. But we must ask, what is the nature of the property right here recognized and enforced

by the state? Moreover, does this property right have any proper relation to the state's legitimate interest in the protection of the right to privacy or state customs and laws?

As a starting point it is fit to observe, as this Court did in *Shelley* v. *Kraemer, supra,* that the mere fact that property rights are involved does not settle the matter. The Court said at 334 U. S. 1, 22:

> "Nor do we find merit in the suggestion that property owners who are parties to these agreements are denied equal protection of the laws if denied access to the courts to enforce the terms of restrictive covenants and to assert property rights which the state courts have held to be created by such agreements. The Constitution confers upon no individual the right to demand action by the State which results in the denial of equal protection of the laws to other individuals. And it would appear beyond question that the power of the State to create and enforce property interests must be exercised within the boundaries defined by the Fourteenth Amendment. Cf. Marsh v. Alabama, 326 U. S. 501, 90 L. ed. 265, 66 S. Ct. 276 (1946)."

This Court has said on several occasions, "that dominion over property springing from ownership is not absolute and unqualified." *Buchanan* v. *Warley*, 245 U. S. 60, 74; *United States* v. *Willow River Power Co.*, 324 U. S. 499, 510; *Marsh* v. *Alabama*, 326 U. S. 501, 506; cf. *Munn* v. *Illinois*, 94 U. S. 113. As the Court said in *Marsh, supra,* "The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it. Cf. *Republic Aviation Corp.* v. *N. L. R. B.*, 324 U. S. 793, 796, 802."

Obviously then further inquiry must be made as to the specific nature of the property right of the Hooper Restaurant which is being enforced by the State in this criminal trespass prosecution. At the outset, it is clear that the case does not involve state enforcement of a property owner's desire to exclude a person or persons for reasons of whim or caprice. The owner testified that he refused to serve the petitioners and ordered them from his restaurant in order to conform with the community custom and a racially segregated "way of life" which has been fostered and buttressed by law (Tr. 25).

Petitioners submit that it is readily apparent that the property interest being enforced against them on behalf of the Hooper Restaurant, bears no substantial relation to any constitutionally protected interest of the property owner in privacy in the use of his premises. The State is not in this prosecution engaged in protecting the right to privacy. It has long been agreed by the courts that a state can "take away" this property right to racially segregate in public accommodation facilities without depriving an owner of Fourteenth Amendment rights. *Western Turf Asso.* v. *Greenberg*, 204 U. S. 359; *Railway Mail Ass'n* v. *Corsi*, 326 U. S. 88; *Pickett* v. *Kuchan*, 323 Ill. 138, 153 N. E. 667, 49 A. L. R. 499 (1926); *People* v. *King*, 110 N. Y. 418, 18 N. E. 245 (1888); Annotation 49 A. L. R. 505; cf. *District of Columbia* v. *John R. Thompson Co.*, 346 U. S. 100.

And indeed a great number of states in our nation have enacted laws making it criminal to engage in just the type of racially discriminatory use of private property which the Restaurant seeks state assistance in preserving here.[2]

From the fact that the States can make the attempted exercise of such a "right" a crime, it does not follow neces-

[2] See collections of such laws in Konvitz, A Century of Civil Rights, *passim* (1961).

sarily and automatically that they must do so, and must refuse (as petitioners here urge) to recognize such a claimed property right to discriminate racially in places of public accommodation. But the fact that the States can constitutionally prohibit such a use of property and that when they do so they are actually conforming to the egalitarian principles of the Fourteenth Amendment (*Railway Mail Ass'n* v. *Corsi*, *supra*, at 93-94) makes it evident that the property interest asserted by the Hooper Restaurant is very far from an inalienable or absolute property right. Indeed the property owner here is attempting to do something that the state itself could not permit him to do on state property leased to him for his business use (*Burton* v. *Wilmington Parking Authority*, 365 U. S. 715), or require or authorize him to do by positive legislation (*cf.* Mr. Justice Stewart's concurring opinion in *Burton*, *supra*).

A basic consideration in this case is that the restaurant involved is a public establishment in the sense that it is open to serve the public and is part of the public life of the community (Mr. Justice Douglas, concurring in *Garner* v. *Louisiana*, 368 U. S. 157, 176). As a consequence of the public use to which the property has been devoted by the owner, this case involves no real claim that the right to privacy is being protected by this use of the State's trespass laws. And, of course, it does not follow from the conclusion that the State cannot enforce the racial bias of the operator of a restaurant open to the public, that it could not enforce a similar bias by the use of trespass laws against an intruder into a private dwelling or any other property in circumstances where the state was exercising its powers to protect an owner's privacy. This Court has recently reiterated the principle that there is a constitutional "right to privacy" protected by the Due Process

clause of the Fourteenth Amendment, *Mapp* v. *Ohio*, 367 U. S. 643, 6 L. ed. 2d 1081, 1090, 1103, 1104; see also *Poe* v. *Ullman*, 367 U. S. 497 (dissenting opinions).

It is submitted that due consideration of the right to privacy affords a sound and rational basis for determining whether cases which might arise in the future involving varying situations should be decided in the same manner urged by petitioner here—that is, against the claimed property interest. Only a very absolutist view of the property "right" to determine those who may come or stay on one's property on racial grounds—an absolutist rule yielding to no competing considerations—would require that the same principles apply through the whole range of property uses, public connections, dedications, and privacy interests at stake. The Court has recognized the relation between the right of privacy and property interests in the past. See e.g. *Thornhill* v. *Alabama*, 310 U. S. 88, 105-106; *Breard* v. *Alexandria*, 341 U. S. 622, 626, 638, 644.

Petitioners submit that a property right to determine on a racial basis who can stay on one's property cannot be absolute at all, for this claimed right collides at some points with the Fourteenth Amendment right of persons not to be subjected to racial discrimination at the hand of the government. *Burton* v. *Wilmington Parking Authority, supra; Shelley* v. *Kraemer, supra.* Mr. Justice Holmes said in *Hudson County Water Co.* v. *McCarter*, 209 U. S. 349, 355:

> All rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighborhood of principles of policy which are other than those on which the particular right is founded, and which become strong enough to hold their own when a certain point is reached.

Petitioners certainly do not contend that the principles urged to prevent the use of trespass laws to enforce racial discrimination in a lunch counter operated as a public business would prevent the state from enforcing a similar bias in a private home where the right of privacy has its greatest meaning and strength. A man ought to have the right to order from his home anybody he prefers not to have in it, and ought to have the help of the government in making his order effective. Indeed, the State cannot constitutionally authorize an intrusion into a private home except in the most limited circumstances with appropriate safeguards against abuses. *Mapp* v. *Ohio*, *supra*; cf. *Frank* v. *Maryland*, 359 U. S. 360. Racial discrimination in a private home, or office, or other property where the right of privacy is paramount is one thing. Racial discrimination at a public restaurant is quite another thing indeed.

Finally the property involved in this case is "affected with a public interest," *Munn* v. *Illinois*, 94 U. S. 113. By its use it has become "clothed with a public interest [is] of public consequence, and affect[s] the community at large" (*id.* at 126).

It is submitted that the totality of circumstances in this case, including the actions of the State's officers in arresting, prosecuting and convicting petitioners, the public character of the business property involved, the plain and invidious racial discrimination involved in the asserted property rights being protected by the state, the absence of any relevant component of privacy to be protected by the state's action in light of the nature of the owner's use of his property, and the state custom of segregation which has created or at least substantially buttressed the type of discriminatory practices involved, are sufficient to require a determination that the petitioners' trespass convictions have abridged their rights under the Fourteenth Amendment.

II.

The Decision Below Conflicts With Decisions of This Court Securing the Right of Freedom of Expression Under the Fourteenth Amendment.

Petitioners were engaged in the exercise of free expression, by verbal and nonverbal requests to the management for service, and nonverbal requests for nondiscriminatory restaurant service, implicit in their continued remaining in the dining area when refused service. As Mr. Justice Harlan wrote in *Garner* v. *Louisiana*: "We would surely have to be blind not to recognize that petitioners were sitting at these counters, when they knew they would not be served, in order to demonstrate that their race was being segregated in dining facilities in this part of the country." 7 L. ed. 2d at 235-36. Petitioners' expression (asking for service) was entirely appropriate to the time and place at which it occurred. They did not shout or obstruct the conduct of business. There were no speeches, picket signs, handbills or other forms of expression in the store possibly inappropriate to the time and place. Rather they offered to purchase food in a place and at a time set aside for such transactions. Their protest demonstration was a part of the "free trade in ideas" (*Abrams* v. *United States*, 250 U. S. 616, 630, Holmes, *J.*, dissenting), within the range of liberties protected by the Fourteenth Amendment, even though nonverbal. *Stromberg* v. *California*, 283 U. S. 359 (display of red flag); *Thornhill* v. *Alabama*, 310 U. S. 88 (picketing); *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 633-634 (flag salute); *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449 (freedom of association).

Questions concerning freedom of expression are not resolved merely by reference to the fact that private property is involved. The Fourteenth Amendment right to free ex-

pression on private property takes contour from the circumstances, in part determined by the owner's right of privacy, and his use and arrangement of his property. In *Breard* v. *Alexandria*, 341 U. S. 622, the Court balanced the "householder's desire for privacy and the publisher's right to distribute publications" in the particular manner involved, upholding a law limiting the publisher's right to solicit on a door-to-door basis. But cf. *Martin* v. *Struthers*, 319 U. S. 141 where different kinds of interests led to a corresponding difference in result. Moreover, the manner of assertion and the action of the State, through its officers, its customs and its creation of the property interest are to be taken into account.

Thus, petitioners submit that a determination of their right to free expression requires consideration of the totality of circumstances respecting the owner's use of the property and the specific interest which state judicial action is supporting. *Marsh* v. *Alabama*, 326 U. S. 501.

In *Marsh*, *supra*, this Court reversed trespass convictions of Jehovah's Witnesses who went upon the privately owned streets of a company town to proselytize for their faith, holding that the conviction violated the Fourteenth Amendment. In *Republic Aviation Corp.* v. *N.L.R.B.*, 324 U. S. 793, the Court upheld a labor board ruling that lacking special circumstances employer regulations forbidding all union solicitation on company property constituted unfair labor practices. See *Thornhill* v. *Alabama*, *supra*, involving picketing on company-owned property; see also *N.L.R.B.* v. *American Pearl Button Co.*, 149 F. 2d 258 (8th Cir. 1945); *United Steelworkers* v. *N.L.R.B.*, 243 F. 2d 593, 598 (D. C. Cir. 1956), reversed on other grounds, 357 U. S. 357; and compare the cases mentioned above with *N.L.R.B.* v. *Fansteel Metal Corp.*, 306 U. S. 240, 252, condemning an employee seizure of a plant. In *People* v. *Barisi*, 193 Misc.

934, 86 N. Y. S. 2d 277, 279 (1948) the Court held that picketing within Pennsylvania Railroad Station was not a trespass; the owners opened it to the public and, their property rights were "circumscribed by the constitutional rights of those who use it." See also *Freeman* v. *Retail Clerks Union*, Washington Superior Court, 45 Lab. Rel. Ref. Man. 2334 (1959); and *State of Maryland* v. *Williams*, Baltimore City Court, 44 Lab. Rel. Ref. Man. 2357, 2361 (1959), which on Fourteenth Amendment and Labor Management Relations Act grounds decided that pickets may patrol private property within a privately owned shopping center.

As Mr. Justice Douglas said while concurring in *Garner* v. *Louisiana*, 368 U. S. 157:

> "Restaurants, whether in a drug store, department store, or bus terminal, are a part of the public life of most of our communities. Though they are private enterprises, they are public facilities in which the states may not enforce a policy of racial discrimination."

The court below denied that the trespass convictions of the petitioners denied any First or Fourteenth Amendment rights stating:

> "On principle, we think the right to speak freely and to make public protest does not impart a right to invade or remain upon the property of private citizens, so long as private citizens retain the right to choose their guests or customers" (App. 8a).

But in this case, the property had been opened to the public, for profit, and race alone was the basis for refusal to serve petitioners. Significantly, the refusal of service was not because of the owner's caprice, but because he felt constrained to conform to the racial prejudice of the community. Thus, under the circumstances of this case, it is

not a general property right which the state enforced by the arrest of petitioners, but a community pattern of racial discrimination which the state clearly may not sanction, *Civil Rights Cases*, 109 U. S. 3, and should not be permitted to encourage or support. See Henkin, *Shelley* v. *Kraemer*: *Notes for a Revised Opinion*, 110 U. of Pa. L. Rev. 473, 499 (1962).

Where free expression rights are involved, the question for decision is whether the relevant expressions are "in such circumstances and . . . of such a nature as to create a clear and present danger that will bring about the substantive evil" which the state has the right to prevent, *Schenck* v. *United States*, 249 U. S. 47, 52. The only "substantive evil" sought to be prevented by this trespass prosecution is the elimination of racial discrimination and the stifling of protest against it; but this is not an "evil" within the State's power to suppress because the Fourteenth Amendment prohibits state support of racial discrimination.

III.

The Decision Below Conflicts With the Decisions of This Court Barring Convictions Under Criminal Statutes and Warrants Which Give No Fair and Effective Warning That Petitioners' Actions, Which Violate No Standard Required by the Plain Language of the Law, Are Prohibited.

The fact that the arrest and conviction were designed to short circuit a bona fide protest is strengthened by the necessity of the state court to make a strained interpretation of the statute in order to bring petitioners' conduct within its ambit. Petitioners' conviction for trespass rests on an interpretation which flies in the face of the plain words of the statute, which reads:

"*Any person or persons who shall enter upon or cross over the land, premises or private property of any person or persons in this State after having been duly notified by the owner or his agent not to do so* shall be deemed guilty of a misdemeanor, and on conviction thereof before some justice of the peace in the county or city where such trespass may have been committed be fined by said justice of the peace not less than one, nor more than one hundred dollars, and shall stand committed to the jail of county or city until such fine and costs are paid; provided, however, that the person or persons so convicted shall have the right to appeal from the judgment of said justice of the peace to the circuit court for the county or Criminal Court of Baltimore where such trespass was committed, at any time within ten days after such judgment was rendered; and provided, further, that nothing in this section shall be construed to include within its provisions the entry upon or crossing over any land when such entry or crossing is done under a bona fide claim of right or ownership of said land, it being the intention of this section only to prohibit any wanton trespass upon the private land of others." (Emphasis added.)

In this case, however, petitioners had entered the restaurant and asked to be assigned seats at a table before they were advised by the hostess, "We have not integrated as yet" (Tr.). They had taken seats and had discussion about the restaurant's policy with both the manager and the owner before the trespass statute was read to them and they were formally asked to leave. Clearly petitioners' failure to obey this request does not bring their action within the purview of this statute. Under the Court of Appeals of Maryland's construction of the law conduct is reached which the words of the statute do not fairly and

effectively proscribe, thus depriving petitioners of any notice that their acts would subject them to criminal liability. There is no assertion that petitioners "enter[ed] . . . after having been notified . . . not to do so" only that they remained after being told to leave. In terms of the clear command of the statute as to entry after notice, this case would fall within the principle of *Thompson* v. *Louisville*, 362 U. S. 199 as a conviction resting on no evidence of guilt.

The vice of vagueness is particularly odious where the right of free speech is put in jeopardy. Conduct involving free speech can only be prohibited by a statute "narrowly drawn to define and punish specific conduct as constitute a clear and present danger to substantial interest of the state." *Cantwell* v. *Connecticut*, 310 U. S. 296, 307, 308; *Garner* v. *Louisiana*, 368 U. S. 157, 185 (Mr. Justice Harlan concurring). If the Court of Appeals of Maryland can affirm the convictions of these petitioners by such a construction they have exacted obedience to a rule or standard that is so ambiguous and fluid as to be no rule or standard at all. *Champlin Ref. Co.* v. *Corporation Com. of Oklahoma*, 286 U. S. 210. Such a result cannot but have a "potentially inhibiting effect on speech." *Smith* v. *California*, 361 U. S. 147, 151. But when free expression is involved, the standard of precision is greater; the scope of construction must, therefore, be less. If this is the case when a State Court limits a statute it must *a fortiori* be the case when a State Court expands the meaning of the plain language of a statute. *Winters* v. *New York*, 333 U. S. 507, 512.

CONCLUSION

WHEREFORE, for the foregoing reasons petitioners pray the Petition for Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX

IN THE

CRIMINAL COURT

PART III OF BALTIMORE CITY

Indictment 2523 Y/1960

STATE OF MARYLAND,

—v.—

ROBERT MACK BELL, LOVELLEN P. BROWN, ARIMENTHA D. BULLOCK, ROSETTA GAINEY, ANNETTE GREEN, ROBERT M. JOHNSON, RICHARD MCKOY, ALICETEEN E. MANGUM, JOHN R. QUARLES, SR., MURIEL B. QUARLES, LAWRENCE M. PARKER and BARBARA F. WHITTAKER.

MEMORANDUM OPINION

BYRNES, *J.*

On July 12, 1960 the above named defendants, students attending local schools, were indicted by the Baltimore City Grand Jury for trespassing on the premises of Hooper's Restaurant at the southwest corner of Fayette and Charles Streets in Baltimore City. The first count of the indictment charges that the defendants

> "... on the seventeenth day of June, in the year of our Lord nineteen hundred and sixty, at the City aforesaid, unlawfully did enter upon and cross over the land, premises and private property of a certain corporation in this State, to wit, Hooper Food Co., Inc., a corporation, after having been duly notified by Albert Warfel,

who was then and there the servant and agent for Hopper [sic] Food Co., Inc., a corporation, not to do so; contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State."

The second count charges that the defendants

"... unlawfully did enter and trespass on certain property of Hooper Food Co., Inc., a corporation which said property was then and there posted against trepassers [sic] in a conspicuous manner; contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State."

Testimony at the trial disclosed that on June 17, 1960, the defendants entered the restaurant while it was open for business and requested the hostess, Ella Mae Dunlap, to assign them seats at tables for the purpose of being served. She informed them that it was not the policy of the restaurant to serve Negroes, and that she was sorry but she could not seat or serve any of the defendants. She explained to them that she was following the instructions of the owner of the restaurant.

Despite this refusal, defendants persisted in their demands and, brushing by the hostess, took seats at various tables on the main floor and at the counter in the basement. Not being served, which they apparently anticipated, some of the defendants began to read their school books.

The trespass statute, Article 27, section 577 of the Maryland Code, 1957 Ed. was read to the defendants and they were told by the manager, Albert R. Warfel, that they were trespassers, and they were then requested to leave. Upon

their refusal to do so, police were summoned. Warfel was advised by the police that in order to have defendants ejected by the Baltimore City Police Department it would be necessary for him to obtain warrants for their arrest for trespassing. Warrants were obtained and the arrests followed. Defendants waived a hearing before the Magistrate at the Central Police Station and the case was referred to the Grand Jury.

Defendants contend that their ejection from the restaurant, and subsequent arrest were violative of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States. The position of the State and the Restaurant Association of Maryland, appearing as Amicus Curiae, is that these clauses of the Fourteenth Amendment do not prohibit discriminatory action by private individuals, such as the proprietor of the restaurant here, nor do they inhibit state action in the form of arrest and conviction for trespass of persons who defy the proprietor's request to leave his property regardless of his reason for doing so. No cases supporting defendants' contention were cited to or found by this Court; on the other hand the State's position is firmly rooted in authority.

At the trial of this case, defendants' counsel repeated arguments made before the Supreme Court of the United States in the highly-publicized case of *Boynton* v. *Virginia*, 364 U. S. 454 (1960) and requested this Court to withhold its decision pending the outcome of that case. Since then the *Boynton* case had been decided, but nothing in the Court's opinion gives solace to defendants. While it is true that the Supreme Court reversed the Virginia Court's conviction of Boynton, an alleged trespasser in a privately owned restaurant, the Court avoided the Constitutional

questions there presented (the same ones advanced here) and held that the restaurant at an interstate bus terminal, although privately owned, was an "integral part of the bus carriers transportation service for interstate passengers" and any racial discrimination in the restaurant violated provisions of the Interstate Commerce Act barring discriminations of all kinds.

It is significant, this Court believes, that in *Boynton, supra*, the Court was careful to point out that "We are not holding that every time a bus stops at a wholly independent roadside restaurant the Interstate Commerce Act requires that restaurant service be supplied in harmony with the provisions of that Act."

Two recent decisions clearly in point are determinative of the principle that in the absence of appropriate legislation forbidding racial discrimination the operators of privately owned restaurants, even though generally open to the public, may discriminate against persons of another color or race, however unfair or unjust such policy may be deemed to be.

In a per curiam opinion the United States Court of Appeals for the Fourth Circuit, *Slack* v. *White Tower*, 284 F. 2d 746 (1960), affirmed Judge Roszel Thomsen's decision holding, after an excellent summation of the applicable law, that a restaurant owner in refusing service to a Negro, violated no law nor did such refusal deprive the Petitioner of any constitutional guarantees, *Slack* v. *White Tower*, 181 F. Supp. 124 (1960).

In the most recent case dealing with efforts of Negroes to force the owners of business premises to open their establishments to all comers through so-called "sit-in" tactics, our Court of Appeals in *Drews* v. *State*, —— Md. ——, 167 A. 2d 341 (1961) affirmed Judge W. Albert Menchine's

conviction of four persons charged with disorderly conduct for refusing to leave Gwynn Oak Amusement Park in Baltimore County after being ordered to do so. Speaking for the Court, Judge Hammond pointed out that the duty imposed by the early common law to serve the public without discrimination was later confined to exceptional callings where an urgent public need required its continuance, such as innkeepers and common carriers. Continuing Judge Hammond stated that

> "• • • Operators of most enterprises including places of amusement, did not and do not have any such common law obligation, and in the absence of a statute forbidding discriminations, can pick and choose their patrons for any reason they decide upon, including the color of their skin."

For the reasons stated this Court must find each defendant guilty on the first count of the indictment, and not guilty on the second count.

Each defendant is fined $10.00 and costs, the fine is suspended, the costs must be paid.

/s/ JOSEPH R. BYRNES
Judge

Filed March 24, 1961

Opinion by Henderson, *J.*

Filed: January 9, 1962

IN THE

COURT OF APPEALS OF MARYLAND

No. 91—September Term, 1961

ROBERT MACK BELL, *et al.*,

—v.—

STATE OF MARYLAND.

BRUNE, *Circuit Judge*,
HENDERSON,
PRESCOTT,
HORNEY,
MARBURY, *Judges*.

These appeals are from $10.00 fines imposed, but suspended, after convictions in the Criminal Court of Baltimore for trespassing on the privately owned premises of Hooper's Restaurant. The appellants entered the premises in protest against the restaurant owner's policy of not serving negroes and refused to leave when asked to do so. In fact, they occupied seats at various tables and refused to relinquish them unless and until they were served. The manager thereupon summoned the police and swore out warrants for the arrest of the "sit-in" demonstrators. They elected not to be tried by the magistrate and were subsequently indicted and tried.

The appellants contend that the State may not use its judicial process to enforce the racially discriminatory practices of a private owner, once that owner has opened his property to the general public, and that the Maryland Criminal Trespass Statute, although constitutional on its face, has been unconstitutionally applied. Apparently the appellants would concede that the owner could have physically and forcibly ejected them, but deny that he could constitutionally invoke the orderly process of the law to accomplish that end.

We find it unnecessary to dwell on these contentions at length, because the same arguments were fully considered and rejected by this Court in two recent cases, *Drews* v. *State*, 224 Md. 186, and *Griffin & Greene* v. *State*, 225 Md. 422. We expressly held in the *Griffin* case, contrary to the arguments now advanced, that demonstrators are not within the exception in the Maryland Trespass Statute, Code (1957), Art. 27, sec. 577, relating to "a *bona fide* claim of right or ownership", and that the statutory references to "entry upon or crossing over", cover the case of remaining upon land after notice to leave.

We have carefully considered the latest Supreme Court case on the subject, *Garner* v. *Louisiana*, —— U. S. ——, 30 L. W. 4070, decided December 11, 1961. There, convictions of "sit-in" demonstrators for disturbing the peace were reversed on the ground that the convictions were devoid of evidentiary support. Chief Justice Warren, for a majority of the court, found it unnecessary to consider contentions based on broader constitutional grounds. In the absence of further light upon the subject, we adhere to the views expressed in the *Griffin* case.

The appellants further contend, however, that the Maryland Statute, as applied, denies to them the freedom of

speech guaranteed under the First and Fourteenth Amendments to the United States Constitution. They argue that their action in remaining on the premises amounted, in effect, to a verbal or symbolic protest against the discriminatory practice of the proprietor. They rely heavily upon *Marsh* v. *Alabama*, 326 U. S. 501. In that case a distributor of religious literature on the sidewalk of a "company town" was prosecuted and convicted of trespass when he declined to leave or desist. The conviction was reversed on First Amendment grounds, despite the finding of the State court that the sidewalk had never been dedicated to public use. Cf. *Tucker* v. *Texas*, 326 U. S. 517, involving a village owned by the United States. But it would appear that the rule of the *Marsh* case had not been extended to the interiors of privately owned buildings, even those of a quasi-public character. See *Watchtower Bible & T. Soc.* v. *Metropolitan Life Ins. Co.*, 79 N. E. 2d 433 (N. Y.); cert. den. 335 U. S. 886; rehearing den. 335 U. S. 912; *Hall* v. *Commonwealth*, 49 S. E. 2d 369 (Va.); appeal dism. 335 U. S. 875; and *Breard* v. *Alexandria*, 341 U. S. 622. On principle, we think the right to speak freely and to make public protest does not import a right to invade or remain upon the property of private citizens, so long as private citizens retain the right to choose their guests or customers. We construe the *Marsh* case, *supra*, as going no further than to say that the public has the same rights of discussion on the sidewalks of company towns as it has on the sidewalks of municipalities. That is a far cry from the alleged right to engage in a "sit-in" demonstration.

Judgments affirmed with costs.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 12

ROBERT MACK BELL, ET AL.,
Petitioners,

v.

STATE OF MARYLAND,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 167

ROBERT MACK BELL, ET AL.,
Petitioners,

v.

STATE OF MARYLAND,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals of Maryland in this case, reported as *Bell v. State*, 227 Md. 302, 176 A. 2d 771, and the Memorandum Opinion of Judge Byrnes, Criminal Court of Baltimore City; are fully set forth in the Appendix to the Petition for Writ of Certiorari.

JURISDICTION

The Petitioners allege that the Supreme Court of the United States has jurisdiction pursuant to 28 U.S.C. 1257(3). The Respondent denies that the Supreme Court has jurisdiction over this case.

QUESTIONS PRESENTED

1. Do the Petitioners present a case of sufficient importance to warrant further review?

2. Does the arrest and conviction, pursuant to a general State trespass statute, of Negro students protesting racial segregation who, over the objection of the owner, seated themselves in the dining area of a privately-owned restaurant in a privately-owned building, and who refused to leave the premises when so ordered by the owner, under the facts of this case, constitute prohibited State action within the meaning of the Fourteenth Amendment of the United States Constitution?

3. Did the arrest and conviction of Petitioners under the Criminal Trespass Statute in this case deny the Petitioners, who were engaged in a "sit-in demonstration" in a private restaurant, the freedom of speech and assembly guaranteed by the First and Fourteenth Amendments to the Constitution of the United States?

4. Was the conviction of Petitioners obtained under a statute so vague as to give no fair warning that their conduct was prohibited and so as to constitute a violation of due process of law secured by the Fourteenth Amendment?

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

1. Section 1, Fourteenth Amendment to the Constitution of the United States.
2. First Amendment to the Constitution of the United States.
3. Section 577, Article 27, Annotated Code of Maryland (1957 Edition); Chapter 66, Laws of Maryland, 1900.

(See Petition at page 3.)

STATEMENT OF FACTS

The State adopts the Petitioners' Statement of Facts.

ARGUMENT

I. PETITIONERS HAVE NOT PRESENTED A CASE OF SUFFICIENT IMPORTANCE TO WARRANT FURTHER REVIEW.

The Petitioners in this case have not presented to the Supreme Court a case of sufficient magnitude to warrant further review. The issue in this case as it applies to Hooper's Restaurant is no longer significant. Since the conviction of the Petitioners, the City Council of Baltimore City has passed an ordinance (Baltimore City Ordinance No. 1249, June 8, 1962; see Appendix, *infra*, p. 11) barring refusal of service in Baltimore restaurants solely on racial grounds.

Circumstances leading to the conviction of the Petitioners could not again arise by reason of the above cited ordinance. The Supreme Court should not grant certiorari in this case, the issues of which have become purely academic, inasmuch as the Petitioners have achieved by political means in this community the result sought in the courts. See *United States v. Abrams*, 344 U.S. 855; *Community Services, Inc. v. United States*, 342 U.S. 932; *Sokol Brothers v. Commissioner*, 340 U.S. 952; *Beal v. United States*, 340 U.S. 852; Stern, *Denial of Certiorari Despite a Conflict*, 66 Harvard Law Review 465 (1953). Furthermore, the Supreme Court has had before it on previous occasions cases involving the constitutional questions presented in this Petition and the Court in those instances refused to consider the constitutional issues presented here. *Boynton v. Virginia*, 364 U.S. 454; *Burton v. Wilmington Parking Authority*, 365 U.S. 715; *Garner v. Louisiana*, 368 U.S. 157.

II. THE ARREST AND CONVICTION, PURSUANT TO A GENERAL STATE TRESPASS STATUTE, OF NEGRO STUDENTS PROTESTING RACIAL SEGREGATION, WHO OVER THE OBJECTION OF THE OWNER SEATED THEMSELVES IN THE DINING AREA OF A PRIVATELY-OWNED RESTAURANT IN A PRIVATELY OWNED BUILDING, AND WHO REFUSED TO LEAVE THE PREMISES WHEN SO ORDERED BY THE OWNER, UNDER THE FACTS OF THIS CASE, DOES NOT CONSTITUTE PROHIBITED STATE ACTION WITHIN THE MEANING OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

The Petitioners argue that the decision below conflicts with decisions of the Supreme Court which condemn the use of state power to enforce a "state custom" of racial segregation. There is nothing in the record to support the bald assertion that there is in the State of Maryland a custom of racial segregation. There was no such finding of fact by the trial court. Almost three years ago, a considerable period considering the rapid evolution of race relations, Chief Judge Thomsen of the United States District Court of Maryland found, as a matter of fact, that in February of 1960 there was no "custom, practice, and usage of segregating the races in restaurants in Maryland." *Slack v. Atlantic White Tower System, Inc.*, 181 F. Supp. 124, 126, 127, aff'd Fourth Cir., 284 F. 2d 746. In that decision, after reviewing facts presented by both sides on the question of custom and usage, Chief Judge Thomsen stated: "Such segregation of the races as persists in restaurants in Baltimore is not required by any statute or decisional law of Maryland, nor by any general custom or practice of segregation in Baltimore City, but is the result of the business choice of the individual proprietors, catering to the desires or prejudices of their customers". *Ibid*, page 127, 128. Furthermore, in view of the fact that the elected representatives of the people of Baltimore have passed an ordinance condemning racial segregation in restaurants

in the city, it can hardly be said that the action of the court in finding the Petitioners guilty of trespass in fact was pursuant to and in support of an entrenched public policy of racial segregation.

The State action under the facts of this case was not prejudicial to Petitioners' constitutional rights. State action in *Garner v. Louisiana*, 368 U.S. 157, was initiated by the police. Petitioners were denied no rights of property. *Shelley v. Kraemer*, 334 U.S. 1. In remaining on the premises of the restaurant, they had none. A considerable time elapsed between the hostess's refusal to seat the Petitioners and their arrest. The record shows that they pushed past the hostess to obtain seats in the dining area (T. 13). There was then a long conversation between the leader of the group and the manager and owner of the restaurant (T. 33). The Petitioners were requested to leave but refused to do so (T. 26). The Police were summoned. When they arrived the members of the Negro group were the only persons remaining in the restaurant (T. 37). The Trespass Statute was read to the group in the presence of the police (T. 37). Some of the group left, but the remainder refused (T. 38). Employees of the restaurant took down names and addresses of those remaining (T. 37). Since the Police refused to arrest the Petitioners without a warrant, Mr. Hooper went to the Central Police Station to obtain warrants (T. 38). The Magistrate called the leader of the group on the telephone, discussed the situation and arrangements were made for a trial on the following Monday (T. 38). Warrants were neither served nor were Petitioners taken into custody (T. 38, 39). It can hardly be said that Petitioners were victimized by oppressive State action under these circumstances.

The State Trespass Statute under which Petitioners were convicted is declaratory of the undoubted common law

right of an owner of property to eject any person who shall enter his private property or remain thereon without his permission and provides for criminal enforcement thereof. *Bell v. State*, 227 Md. 302, 176 A. 2d 771; *Williams v. Howard Johnson's Restaurant*, 268 F. 2d 845. The right of a person to protect his property, including business property, necessarily includes the right to eject persons trespassing thereon. At common law the occupant of any house, store, or other building has the legal right to control and permit whom he pleases to enter and remain there and he also has the right to expel from the room or building anyone who abuses the privilege which has been given him. Therefore, while the entry by a person on the premises of another may be lawful by reason of an implied invitation, his failure to depart at the request of the owner will make him a trespasser and will justify the owner in using reasonable force to eject him. 4 Am. Jur., *Assault and Battery*, Section 76, page 167; American Law Institute, *Restatement, Torts*, Section 77; cases collected in 9 A.L.R. 379, "Right to Eject Customers from Store;" *Martin v. Struthers*, 319 U.S. 141.

To prohibit the State through its inherent police power and its law enforcement officials to assist the owner of private property to forcibly eject trespassers (i.e, persons unlawfully remaining on the private premises) would subject the owner to the onus of employing his own means to achieve this purpose should he wish to do so. The violence which could result in some parts of the country is hardly a desirable social solution in these racial rights controversies. The conduct of the parties in this Maryland case was unusual and, we submit, exemplary.

The Petitioners contend that a restaurant, such as Hooper's, is so "affected with the public interest" that its right to choose its clientele, however discriminatory, can-

not be enforced when such discrimination is based upon race alone (Petition, page 13). In support of this proposition Petitioners have cited no cases involving restaurants. *Garner v. Louisiana*, 368 U.S. 157, involving a department store lunch counter, was decided on other grounds. *Munn v. Illinois*, 94 U.S. 113, involves rate regulation of a public utility and is not germane to restaurants. In fact, the Supreme Court has refused to hold that where a privately-owned restaurant is involved, in the absence of the general taxpaying public's ownership of the facilities, or interstate commerce, that the Supreme Court will extend Federal protection against racial discrimination on the basis of the Fourteenth Amendment. *Burton v. Wilmington Parking Authority*, 365 U.S. 715; *Boynton v. Virginia*, 364 U.S. 454.

Petitioners have cited the case of *Shelley v. Kraemer*, *supra*, in support of the Petition. That case, however, involved unwarranted restraint upon the alienation and use of real property solely on the basis of race. The facts in the instant case do not involve the denial to the Petitioners of any rights of property and, therefore, these cases are not in conflict.

III.

THERE IS NO CONFLICT BETWEEN THIS CASE AND DECISIONS OF THE SUPREME COURT SECURING THE RIGHT OF FREEDOM OF SPEECH AND ASSEMBLY UNDER THE FIRST AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION.

Petitioners have cited no case that extends Federal protection of freedom of speech and assembly to an unprivileged demonstration in the interior of a privately-owned restaurant on privately-owned property. The Supreme Court has not gone that far. The picketing cases cited by Petitioners involve the special field of labor relations, which

is necessarily concerned with the rights of individual employees who have, depending on the circumstances, an implied license to demonstrate as a part of bargaining activities on the private premises of the employer by reason of their contract of employment. There is no such relationship between the Petitioners and the owners of this restaurant. *Marsh v. Alabama*, 326 U.S. 501, involves religious solicitation on the *streets* of a company town, which can hardly be considered analogous; nor should the court be impressed with the analogy of picketing in the Pennsylvania Railroad Station in New York City, hardly a quiet dining room. *People v. Barisi*, 86 N.Y.S. 2d 277.

In *Martin v. Struthers, supra*, at page 147, Mr. Justice Black stated as follows:

> "Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved. *The dangers of distribution can so easily be controlled by traditional legal methods*, leaving to each householder the full right to decide whether he will receive strangers as visitors, that stringent prohibition can serve no purpose but that forbidden by the Constitution, the naked restriction of the dissemination of ideas.
>
> *"Traditionally the American law punishes persons who enter onto the property of another after having been warned by the owner to keep off.* General trespass after warning statutes exist in at least twenty states, while similar statutes of narrower scope are on the books of at least twelve states more. We know of no state which, as does the Struthers ordinance in effect, makes a person a criminal trespasser if he enters the property of another for an innocent purpose without an explicit command from the owners to stay away." (Emphasis supplied.)

Applying this dicta to the facts of this case, the record indicates that the restaurant owner was not only fully apprised of Petitioners message as evidenced by their actions as well as words, but that he indicated that he wished them to leave. Furthermore, by the time the police had arrived, there were no more customers present in the dining room and pickets were parading outside of the restaurant. Under these circumstances it can hardly be said that Petitioners' rights of expression were violated by their trespass conviction. In addition, according to the testimony of their leader, Petitioners expected to be arrested, and the trial court could well have found under these circumstances that their arrest was a part of their expression of their cause and enhanced the publicity given thereto (T. 46, 48, 55, 56).

> "Q. Now, Mr. Quarles, you remained even though you knew you were going to be arrested? A. Yes, sir.
>
> "Q. Is that part of your technique in these demonstrations? A. Yes, sir" (T. 55, 56).

For the foregoing reasons, it is submitted that neither does the Maryland Court of Appeals' decision conflict with decisions of the Supreme Court securing the right of freedom of expression, nor was the Maryland Court in error in affirming Petitioners' conviction on this ground.

IV.

THE DECISION BELOW DOES NOT CONFLICT WITH DECISIONS OF THIS COURT BARRING CONVICTIONS UNDER CRIMINAL STATUTES WHICH GIVE NO FAIR WARNING THAT PETITIONERS' CONDUCT WAS PROHIBITED.

The point is raised for the first time in the petitions and was neither raised in the trial court nor in the Maryland Court of Appeals. According to the transcript, *inter alia*, the leader of the Petitioners, Quarles, fully understood the

meaning of the trespass statute and recognized that Petitioners were to be arrested if they remained in the restaurant after being told to leave and having the Trespass Statute read to them (T. 53, 54, 55, 56, 58).

The statute under which Petitioners were convicted is a general trespass statute, of the type referred to in *Martin v. Struthers, supra*, as being on the books of at least twenty states, while similar statutes of narrower scope are on the books of at least twelve more. See n. 10, at page 147, *Martin v. Struthers*, 319 U.S. 141. The statute was enacted in 1900, and has never been found to be so vague and indefinite as to fail to apprise a violator of prohibited acts thereunder.

CONCLUSION

WHEREFORE, for the foregoing reasons, the State of Maryland respectfully submits that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

BALTIMORE CITY ORDINANCE NO. 1249, JUNE 8, 1962.

SECTION 1. Be it ordained by the Mayor and City Council of Baltimore, That Sections 8, 9, 11 and 12 of Article 14A of the Baltimore City Code (1950 Edition), title "Human Relations," sub-title "Baltimore Equal Employment Opportunity Commission," as said sub-title was ordained by Ordinance No. 379, approved April 18, 1956, and amended by Ordinance No. 409, approved July 6, 1960, be and they are hereby repealed and re-ordained, with amendments; that a new Section 10A be and it is hereby added thereto, to follow immediately after Section 10 thereof; that the name of the sub-title be and it is hereby changed to "Baltimore Equal Opportunity Commission," and all to read as follows:

8. The Mayor and City Council of Baltimore finds that the population of this city is composed of peoples of many divers racial, religious and other ethnic groups. The practice of discrimination in employment against members of these groups and the consequent failure to utilize the productive capacities of individuals to their fullest extent deprives large segments of the population of this city of earnings necessary to maintain decent standards of living, necessitates their resort to public relief and intensified racial, religious and ethnic intolerance thereby resulting in grave injury to the public health and welfare. The practice by divers places of public accommodation of refusing to accommodate and serve members of these groups also tends to exacerbate intergroup relations thereby impairing the public welfare. It is hereby declared to be the

public policy of this City to foster the employment of all persons in accordance with their fullest capacities, and to accommodate and serve persons in divers places of public accommodation, regardless of the race, color, religion, ancestry or national origin of such persons.

9. . . . The term "place of public accommodation" includes a hotel, motel, inn or restaurant, meaning establishments commonly known or recognized as regularly engaged in the business of providing sleeping accommodations, or serving meals, or both for a consideration, and which are open to the general public. The term "place of public accommodation" does not apply to those establishments commonly known and recognized as boarding houses or rooming houses, to lunch counters or refreshment stands maintained in places of recreation or amusement such as bowling alleys, billiard halls, or swimming pools. Also the term "place of public accommodation" does not apply to those establishments dealing in alcoholic beverages where the average daily receipts of the sale of alcoholic beverages exceeds the average daily receipts of the sale of food nor to that part or parts of such restaurant establishments which part or parts are primarily devoted to the sale of alcoholic beverages.

The term "commission" means the Baltimore Equal Opportunity Commission created herein.

10A. An owner or operator of a place of public accommodation or an agent or employee of said owner or operator shall not, because of the race, color, creed or national origin of any person, refuse, withhold from, or deny to such person any of the accommodations, advantages, facilities and privileges of such place of public accommodation.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 12

ROBERT MACK BELL, ET AL.,
Petitioners.

v.

STATE OF MARYLAND,
Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

BRIEF FOR RESPONDENT

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ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

BRIEF FOR RESPONDENT

OPINION BELOW

The opinion of the Court of Appeals of Maryland (R. 10) is reported in 227 Md. 302, 176 A. 2d 771 (January 9, 1962). The Memorandum Opinion of the Criminal Court of Baltimore, Byrnes, J., March 23, 1961 is unreported (R. 6).

JURISDICTION

The Petitioners allege that the Supreme Court of the United States has jurisdiction pursuant to 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

1. Does a state criminal trespass conviction of Negroes protesting a racial segregation policy in a private restaurant constitute state action proscribed by the Fourteenth Amendment in a municipality where neither law nor local custom require segregation?

2. Were Petitioners denied due process of law because their convictions under the Maryland Criminal Trespass Statute were based upon no evidence of the proscribed conduct, or because the statute gave no fair warning of the prohibited conduct?

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

1. Section 1, Fourteenth Amendment to the Constitution of the United States.

2. Section 577, Article 27, Annotated Code of Maryland (1957 Edition); Chapter 66, Laws of Maryland, 1900 (see Amended Brief for Petitioners, Pages 4 and 5).

STATEMENT OF FACTS

The facts in *Bell v. Maryland* differ considerably from the facts in the sit-in cases previously before this Court. Here, the demonstrators entered a private restaurant in a privately-owned building in Baltimore City (R. 30). Neither the municipality in which the restaurant was located nor the State had a restaurant segregation law. Nor was there any evidence of a local custom of segregation in the community (R. 50). The demonstrators, who passed through the street-level lobby of the restaurant, were met at the entrance to the private dining area of the restaurant by the hostess, who normally seats customers

(R. 23). She was standing at the top of four steps (R. 23). Petitioners were barred from further entry into the dining room by the hostess and the Assistant Manager on the sole ground that the owner of the restaurant feared a loss of clientele if Negroes were permitted to eat in the private dining areas of the restaurant (R. 24, 32, 43). In spite of this notice not to enter, the demonstrators nevertheless pushed by the hostess and took seats at tables throughout the dining room, one or two at a table, and in the grille in the basement (R. 25, 47). Meanwhile a long conversation took place between the leader of the group and the manager and owner of the restaurant (R. 32). The Petitioners were requested to leave but refused to do so (R. 28). The police were summoned. When they arrived the members of the Negro group were the only persons remaining in the restaurant (R. 39). The Trespass Statute, Section 577, Article 27, Annotated Code of Maryland (1957 Edition) was read to the group in the presence of the police (R. 28, 39). Some of the group left, but the remainder refused (R. 39). Employees of the restaurant took down the names and addresses of those remaining (R. 39). Since the police refused to arrest the Petitioners without a warrant, Mr. Hooper, the owner, went to the Central Police Station to obtain warrants (R. 39). The magistrate spoke with the leader of the group on the telephone; and the Petitioners agreed to come down to the police court on Monday morning and submit to trial (R. 40). One and one-half hours after their initial entry, Petitioners left the restaurant (R. 41). The leader of the demonstrators later testified that the group remained on the premises even though they knew they were going to be arrested; and that being arrested was a part of their technique in demonstrating against segregated facilities (R. 49).

ARGUMENT

I.

A STATE CRIMINAL TRESPASS CONVICTION OF NEGROES PROTESTING A RACIAL SEGREGATION POLICY IN A PRIVATE RESTAURANT DOES NOT CONSTITUTE STATE ACTION PROSCRIBED BY THE FOURTEENTH AMENDMENT IN A MUNICIPALITY WHERE NEITHER LAW NOR LOCAL CUSTOM REQUIRE SEGREGATION.

Conspicuously absent from the facts in this case is State action. In order to be constitutionally prohibitive, State action must "coerce," "command", and "mandate" the racial discriminatory practice leading to conviction of the petitioners. *Lombard v. Louisiana*, 373 U.S. 267. There is neither such command, coercion, nor mandate here. The State's involvement is not to a degree that it may be held *responsible* for the discrimination.

Maryland at the time of the arrest of the Petitioners did not have a statute requiring segregation of restaurants and other places of public accommodation. Cf. *Peterson v. Greenville*, 373 U.S. 244. Nor did the City of Baltimore, the situs of the subject restaurant, have an ordinance prohibiting equal access to restaurants. *Ibid.* The evidence adduced at the trial did not reveal that the proprietor refused service on the basis of any express official State or municipal policy. Cf. *Lombard v. Louisiana*, *supra*. It was not unlawful for the restaurant owner to serve the demonstrators; nor was it unlawful for them to eat in the restaurant if the owner had served them. Cf. *Peterson v. Greenville*, *supra*; *Gober v. Birmingham*, 373 U.S. 374.

The neutrality of the State here is implicit in the acts of its officers. The police, when summoned by the proprietor refused to arrest the Petitioners (R. 40). The police insisted that the owner swear out warrants before a Police Magistrate. The arrests were never made by

the police even though one and one half hours after their initial entry, the Petitioners were still in the restaurant refusing to leave. The proprietor, nevertheless, had advised the Petitioners that they would be arrested if they failed to leave and he read the trespass statute to them. (R. 29, 48). The Petitioners were not placed in custody. In fact, they made arrangements with the Magistrate by telephone to come to the court the following Monday, voluntarily, to submit to trial (R. 40, 50).

Community custom did not dictate the result in the *Bell* case. No evidence was produced before the trial court to show the existence of an overriding custom or "climate" of segregation in the community causing unequal enforcement of otherwise innocuous State laws solely to exclude Negroes on the basis of their race. In fact the evidence reveals exactly the opposite conclusion. Quarles, leader of the demonstrators, testified that in a number of other restaurants where the demonstrators had sought service, they sat, were served and ate (R. 50). In such a fluid situation in the immediate community, it could hardly be concluded now by the mere recitation of empty statutes not even before the trial court (Bell brief, p. 31, n. 13), that Jim Crow ruled the roost. Furthermore, over three years ago, a considerable period considering the rapid evolution of race relations, Chief Judge Thomsen of the United States District Court of Maryland found, as a matter of fact, that in February of 1960 there was no "custom, practice, and usage of segregating the races in restaurants in Maryland." *Slack v. Atlantic White Tower System, Inc.*, 181 F. Supp. 124, 126, 127, aff'd Fourth Cir., 284 F. 2d 746. In that decision, after reviewing facts presented by both sides on the question of custom and usage, Chief Judge Thomsen stated:

> "Such segregation of the races as persists in restaurants in Baltimore is not required by any statute or

decisional law of Maryland, nor by any general custom or practice of segregation in Baltimore City, but is the result of the business choice of the individual proprietors, catering to the desires or prejudices of their customers." *Ibid*, pages 127, 128.

The reason given by the owner of the restaurant for refusing service to Petitioners was that in his opinion his particular clientele did not wish to eat with Negroes.*

> "I tried to reason with these leaders, told them that as long as my customers were deciding who they want to eat with, I'm at the mercy of my customers. I'm trying to do what they want. If they fail to come in, these people are not paying my expenses. and my bills. They didn't want to go back and talk to my colored employees because every one of them are in sympathy with me and that is we're in sympathy with what their objectives are, with what they are trying to abolish, but we disapprove of their methods of force and pushed their way in" (R. 32, 33).

This statement was corroborated by Petitioner Quarles' own statement:

> "I was asking him, well, why wasn't it these Negroes he thought so much of weren't capable of sitting at his tables to eat? He said, well, it's because my customers don't want to eat with Negroes" (R. 43).

Petitioners' argument that the State of Maryland has denied to Petitioners equal protection of its laws is based upon the erroneous theory that the State of Maryland has caused the Petitioners' convictions of a crime from which persons other than Negroes would be immune. In the absence of legislation to the contrary, the State is not

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* Although the nominal owner of the restaurant is a corporation, of which Mr. Hooper is President, he is referred to herein as the owner of the restaurant in the same manner as he is referred to as the owner in the testimony (R. 30, 31).

charged with the positive duty of prohibiting unreasonable discrimination in the use and enjoyment of facilities licensed for public accommodation. *Williams v. Howard Johnson's Restaurant*, (4th Cir.) 268 F. 2d 845; *Slack v. Atlantic White Tower System, Inc.*, 181 F. Supp. 124, aff'd, (4th Cir.) 284 F. 2d 746. The owner of a restaurant, having the legal right to select the clientele he will serve, may, to enforce this right, use reasonable force to repel or eject from his place of busines any person whom he does not wish to serve for whatever reason. See cases collected in 9 A.L.R. 379 and 33 A.L.R. 421; also 4 Am. Jur., *Assault and Battery*, Section 76, page 167; *Restatement of the Law of Torts*, Section 77; *Martin v. Struthers*, 319 U.S. 141.

So long as such right of the proprietor exists, to leave, as his sole remedy, the application by him of force would surely offend the principles of an ordered society. Cf. *Griffin v. Collins*, 187 F. Supp. 152. However, in calling upon a peace officer of the State to eject any person, the owner may employ only such means involving the State as do not single out and enforce sanctions against a particular racial class of persons. This is the gist of the State action argument.

Petitioners' theory is incorrect because where the application of the criminal trespass statute operates equally against all persons whom the proprietor wishes to exclude or eject, and the State is not significantly involved in the owner's selection, then the neutral use of the State law enforcement process to enforce the proprietor's selection of clientele is not prohibited by the Fourteenth Amendment. Cf. *Shelley v. Kraemer*, 334 U.S. 1; *Barrows v. Jackson*, 346 U.S. 249.

Petitioners further contend that licensing of restaurants by the State is a significant factor. However, State action with respect to licensed facilities depends upon whether

interdependence between State and its licensees is to an extent that the State participates in and can regulate decisions of its licensees relating to private discrimination on the basis of race or color. *Burton v. Wilmington Parking Authority*, 365 U.S. 715; *McKibbin v. Michigan Corporation & Securities Commission*, 369 Mich. 69, 119 N.W. 2d 557 (1963). Where the statutory fee, imposed by the State upon a business enterprise operated for a profit, is a mere tax on the business and not a regulatory license, there can be no State involvement in the decisions of the internal management of the business. *Spencer v. Maryland Jockey Club*, 176 Md. 82, 4 A. 2d 124, app. dismissed, 307 U.S. 612. Where the licensing is regulatory in the exercise of the police power, however, the Legislature may prescribe reasonable rules within the scope of the regulation. Any restaurant operated for profit in Maryland must obtain a license whether it operates as an exclusive club or is open to the public generally. Maryland Code (1957 Edition), Article 56, Section 178. This license is a statutory fee or tax. The distinction between those food service facilities that must pay the statutory fee and those that are exempt therefrom, is whether or not the business operates for profit. Ibid, Sec. 8. There is no statutory exemption for facilities that operate as exclusive clubs or place restrictions upon clientele. The police and health statutes apply to all establishments regardless of profit or selection of clientele. Maryland Code, Article 43, Secs. 200-203.

It is settled law in Maryland and in other jurisdictions that the licensing of a place of public amusement does not constitute a franchise requiring the owner to furnish entertainment to the public or admit everyone who applies. *Greenfield v. Maryland Jockey Club*, 190 Md. 96, 57 A. 2d 335; *Marrone v. Washington Jockey Club*, 227 U.S. 633; *Madden v. Queens County Jockey Club*, 296 N.Y. 249, 72 N.E. 2d 697; 1 A.L.R. 2d 1160, cert. den. 332 U.S. 761; cases

collected in 1 A.L.R. 2d 1165; 60 A.L.R. 1089; 30 A.L.R. 651. Nor does the refusal to contract, based solely upon the race of the party seeking the bargain, offend the guarantees of the Fourteenth Amendment. *Reed v. Hollywood Professional School*, 169 Cal. App. 2d 887, 338 P. 2d 633; *Gardner v. Vic Tanny Compton*, 182 Cal. App. 2d 506, 87 A.L.R. 2d 113.

Shelley v. Kraemer, supra, has no application here. In that case the constitutional right violated by the State's enforcement of restrictive covenants was a property right—the right to the use and enjoyment of property already purchased. In the case before this Court, Petitioners were denied no rights or property. Under the present status of the law they had none. *Civil Rights Cases*, 109 U.S. 3. This Court's holding that each person in the community has a right to remain on private premises of another operated as a business, licensed or otherwise, without the permission of the owner, would be tantamount to conferring upon ever person an inchoate property right in the business premises, becoming vested at the moment of entry. In the absence of legislation creating or taking away property rights involved here, such a holding would not be proper exercise of the judicial function.

In conclusion, in order to make *Shelley v. Kraemer* logically consistent with the result in the case at bar urged by these Petitioners, this Court must hold that these Negroes had an inalienable right to enter and receive food service in Hooper's Restaurant, which right could not be denied them by Mr. Hooper on the basis of their race alone. Anything short of such a holding would be begging the question; for if this Court holds that Petitioners' rights were merely dependent on the existence of notices posted upon the door; the basic civil rights issue will merely be shifted to the street.

II.

PETITIONERS WERE NOT DENIED DUE PROCESS OF LAW SINCE THEIR CONVICTIONS UNDER THE MARYLAND CRIMINAL TRESPASS STATUTE WERE BASED UPON EVIDENCE OF THE PROSCRIBED CONDUCT, OR, IN THE ALTERNATIVE, BECAUSE THE STATUTE GAVE FAIR WARNING OF THE PROHIBITED CONDUCT.

There are ample facts in the record showing violation of the Maryland trespass statute. Petitioners entered the lobby of Hooper's Restaurant through a revolving door. Petitioners were notified by the hostess (R. 24, 42) and Assistant Manager (R. 43, 47) of the restaurant that they would not be permitted to enter and be seated in the private dining areas of the restaurant. Nevertheless, part of the group of demonstrators ascended the four steps separating the lobby from the dining room and pushed by the hostess to gain entry to the dining-room. Part of the group, also ignoring the management's warning, descended the steps from the lobby to the grille on the lower floor (R. 43, 47).

Clearly, under the facts of this case, Petitioners, after notification by the owner's agent not to do so, entered and crossed over the premises and private property of another in violation of the Maryland Criminal Trespass Statute. That Petitioners were so notified was admitted by Quarles, leader of the group, in his testimony (R. 42, 43). As to the demonstrators who went to the grille downstairs, Quarles stated:

> "Q. Why did some of the students go downstairs? Didn't you say they went downstairs because they couldn't be seated upstairs? A. After they were blocked forcibly by the manager and hostess, they proceeded downstairs to seek service" (R. 46, 47).

Judge Byrnes, who presided at the trial, in his Memorandum Opinion (R. 6, 7) found as a matter of fact that

the testimony disclosed that the defendants entered the restaurant and requested the hostess to assign them seats; but she refused, informing Petitioners that it was not the policy of the restaurant to serve Negroes. She said she was following the instructions of the owner of the restaurant. Commenting on the evidence, Judge Byrnes stated:

> "Despite this refusal, defendants persisted in their demands and, brushing by the hostess, took seats at various tables on the main floor and at the counter in the basement" (R. 7).

. . . . . .

It is submitted that the evidence before the trial judge in this case goes far beyond the mere refusal to leave after lawful entry, the basis of the attack on the application of the Maryland statute. On the basis of the foregoing references to the testimony, and Judge Byrnes' comments thereon, it is clear that there was evidence of notice to the Petitioners by the owner; and that such evidence was considered by the trial judge. Cf. *Krauss v. State*, 216 Md. 369, 140 A. 2d 653 (1958).

It should be noted that the Maryland statute refers both to "entry upon" and "crossing over" such premises. The Petitioners in this instance were notified by the owner's agent not to enter the dining areas of the premises. If the Court should construe the statute to require notification of entry, as to those portions of the premises, such notification was given. But here, under the Maryland statute, it is unnecessary to go that far. The Maryland statute merely requires that the owner notify the potential trespasser not to "cross over" his property. Implicit in such a warning is the command to halt and advance no further on the owner's premises, when so notified.

The construction of the statute advanced here is consistent with the fact that Maryland has two criminal trespass statutes. The second count of the indictment was drawn pursuant to Section 576 of Article 27 of the Mary-

land Code (1957 Ed.). This Section of the criminal trespass act prohibits the entry of "posted" premises. Clearly, such statute pertains to notification by means of posting signs at the boundary of such property. However, by the addition of the words "crossing over", Section 577 surely refers to the failure of the trespasser to continue beyond the point where, upon discovery, the owner had notified him to halt. The words of the statute are clear and a reasonable construction is called for. It should be noted that the statute proscribes *either* entry upon *or* crossing over.

However, even if the Supreme Court, in reviewing the record before it, finds *no* evidence that the Petitioners were duly notified not to enter & cross over the dining areas of the restaurant, it has before it ample evidence that Petitioners refused to leave the premises when so requested. The Maryland Court of Appeals, in construing the Maryland Trespass Statute, has stated that statutory references to "entry upon or crossing over", cover the case of remaining upon land after notice to leave. *Bell v. State*, 227 Md. 302, 176 A. 2d 771 (R. 11); *Griffin v. State*, 225 Md. 422, 171 A. 2d 717 (1961). See also, *State v. Avent*, 253 N.C. 580, 118 S.E. 2d 47, vacated and remanded on other grounds, *Avent v. North Carolina*, 373 U.S. 375.

The Maryland Trespass Statute is neither void for vagueness nor unconstitutionally applied because the terms used are clear and have well-settled meanings. In *Alford v. United States*, 274 U.S. 264, this Court upheld the conviction of a person under a statute penalizing the building of a fire "near" any forest in the public domain. The Court said that the word "near" taken in connection with the danger to be prevented, laid down a plain enough rule of conduct for anyone who seeks to obey the law. Similarly in *Omaechevarria v. Idaho*, 246 U.S. 343, this Court held that men familiar with range conditions and desirous of

observing the law would have little difficulty in knowing what was prohibited by a statute forbidding the herding of sheep on any cattle "range," "usually" occupied by any cattle grower. It has been held further that a criminal statute penalizing a bank employee for receiving money, checks, or other property as a deposit in the bank when he has knowledge that it is insolvent, is not unconstitutionally vague although "insolvent," which has several meanings, was not defined in the statute. *Eastman v. State*, 131 Ohio State 1, 1 N.E. 2d 140, appeal dismissed 299 U.S. 505.

This Court has said in effect that persons of ordinary intelligence engaged in an activity coming within the purview of a criminal statute are in a position to know what that statute proscribes. *McGowan v. Maryland*, 366 U.S. 420, 428; *United States v. Harriss*, 347 U.S. 612, 617. The Petitioners here fall within this rule. Petitioners were engaged in an activity — namely, demonstrating against segregation in private establishments — which was, to say the least, risky. One of the risks of which they were aware was arrest (R. 49). It was testified that one or two of the group had been arrested previously for demonstrating in Hooper's Restaurant (R. 35, 56, 57); and the Trespass Statute was read to them at that time (R. 58). On that occasion the owner had to use physical force to keep demonstrators from entering the outside door (R. 59). Additionally in the present case the Petitioners arrived at the restaurant carrying picket signs which some of the group proceeded to display outside the door after Petitioners were refused service (R. 44). Under these circumstances, it could hardly be said Petitioners were mislead by the application of the Maryland Trespass Statute here. In fact, it is quite apparent that they knew, prior to entering, that they were not welcome in Hooper's Res-

taurant; and their arrest, trial, and attendant publicity thereof, were an intrinsic part of their method of expressing protest (R. 49). Furthermore, if Petitioners had really been ingenuously ignorant of the proscriptions of the Maryland statute, they would certainly have raised the issue at their trial in their defense. The record does not show that Petitioners did not know they would subject themselves to criminal penalties for remaining on the private premises of another after having been warned to leave.

In conclusion, Petitioners were not denied due process of law because their convictions under the Maryland Criminal Trespass Statute were based upon some evidence that (1) they entered the dining areas of the restaurant after warning not to do so; (2) they crossed over a portion of the premises after warning not to do so; or (3) they had actual notice prior to entry that they would be in violation of the Maryland Criminal Trespass Statute if they sought food service in Hooper's Restaurant. Further, the Maryland Criminal Trespass Statute gave fair warning, and they had actual knowledge, that to remain on the private premises of another after warning was proscribed by the statute.

CONCLUSION

It is respectfully submitted, for the reasons set forth herein, that the judgments below should be affirmed.

Respectfully submitted,

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